R58. Agriculture and Food, Animal Industry.
R58-10. Meat and Poultry Inspection.
R58-10-1. Authority.

Promulgated under authority of Section 4-32-7.

R58-10-2. Purpose.

The purpose of this rule is to establish standards and procedures for the meat and poultry product inspection programs, which shall at least equal or exceed those imposed by the Federal Meat Inspection Act and Poultry Inspection Act.

R58-10-3. Federal Regulations Adopted by Reference.

Accordingly, the Division adopts the meat and poultry inspection standards and procedures as specified in Title 9, Chapter III, Sub-Chapter A, Agency Organization and Terminology; Mandatory Meat and Poultry Products Inspection and Voluntary Inspection and Certification, Part 300 through 381; Sub-Chapter D, Food Safety and Inspection Service Administrative Provisions. Part 390 and 391, Sub Chapter E, Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, Part 416, 417, 424, 500, and Sub-Chapter I, Egg Products Inspection Act, Part 590. Code of Federal Regulations, Animal and Animal Products, 9 CFR 300 through 590, January 1, 2000 edition, which is incorporated by reference within this rule.

KEY: food inspection
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R58. Agriculture and Food, Animal Industry.
R58-17. Aquaculture and Aquatic Animal Health.
R58-17-1. Authority and Purpose.

(A) This rule is promulgated under the authority of Section 4-37-101 (et seq.) Amendments, Subsection 4-2-2(j) and 4-37-503.

(B) It is the intent of this rule to establish a program for the registration and fish health monitoring of aquaculture facilities, fee-fishing facilities, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short-term fishing events and displays. This rule also addresses the importation (entry) of aquatic animals (including fish, fish eggs, gametes) into the State of Utah and establishes requirements for health approval of aquatic animals and their sources. The program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases which adversely affect both cultured and wild aquatic animal stocks.

(C) Persons engaged in any of the aquatic animal operations listed in R58-17-1(B) must comply with the rules concerning site selection and species control under Department of Agriculture and Food 4-37-201(3)and 4-37-301(3) and Department of Natural Resources rules R657-3 and R657-16.

(D) This rule is part of a statewide aquaculture disease control effort that includes procedures and policies adopted by the Fish Health Policy Board.

R58-17-2. Definitions.

(A) The following terms are defined for the purpose of this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, fish processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete of any species listed in definitions under Section (3)(a).

(4) "Brokers and dealers" are individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells additional aquatic animals without rearing them pursuant to R58-17-14(D).

(5) "Certificate of Registration (COR)" means an official document which registers facilities with the Department of Agriculture and Food or which registers facilities and events with the Division of Wildlife Resources pursuant to R58-17-4. The purpose of the document is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(6) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to R58-17-4(A)(1) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(7) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to R58-17-4(A)(2) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(8) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., Renibacterium salmoninarum (BKD), IHNV, IPNV, OMV, VHSV) and those horizontally transmitted (from one fish to another by contact or association, i.e., Aeromonas salmonicida, Asian tapeworm, Ceratomyxa shasta, PKX, Myxobolus cerebralis (whirling disease), and Yersinia ruckeri).

(9) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. This type of pathogen generally cannot be treated and is controlled through avoidance, eradication, and disinfection (see R58-17-20).

(10) "Emergency Response Procedures" are procedures approved by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to R58-17-9 and R58-17-15(D)(6).

(11) "Emergency response team" means teams as approved by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to R58-17-10(A)(1) and R58-17-10(B)(1).

(12) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah. An entry permit is issued for a 30 day period and stipulates which species, size or age, weight and source of aquatic animals are to be imported.

(13) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage.

(14) "Fish health approved/approval" means a system of procedures and processes which allows an assessment of the disease history of a facility or population of aquatic animals and which grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. Fish Health Approval status is granted to COR holders in Utah and to aquatic animal sources outside of Utah, all of which have satisfactorily completed health approval assessment requirements pursuant to R58-17-15, have been assigned a health approval number, and placed on the fish health approval list (R58-17-13(C)). Fish health approval is necessary before buying, selling or brokering aquatic animals within Utah or importing aquatic animals into Utah.

(15) "Fish Health Policy Board" means the board created pursuant to Amendment 4-37-503.

(16) "Fish processing plant" means a facility pursuant to R58-17-2(A)(2)(a), R58-17-13(G) and (H), and R58-17-17 used for receiving whole dead, eviscerated fresh or frozen salmonids or other live and dead aquatic animals as approved on the COR for processing.

(17) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(18) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(19) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources rule R657-3. Ornamental fish are not regulated under rules R58-17 or R657-3. If the Department or

Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(20)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(21) "Procedures for the Timely Reporting of Pathogens" means procedures approved by the Fish Health Policy Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out-of-state health approved source pursuant to R58-17-9 and R58-17-15(D)(5).

(22) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time frame. A prohibited pathogen is generally very difficult or impossible to treat and is controlled through avoidance, eradication, and disinfection (see R58-17-20).

(23)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(24) "Public fishery resource" means aquatic animals produced in public aquaculture facilities and wild and free ranging populations of aquatic animals in the surface waters of the state.

(25) "Quarantine" means the restriction of movement of live aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of Agriculture or State Veterinarian pursuant to R58-17-10 and Agricultural code 4-31-16 and 17.

(26) "Reportable pathogen" is a pathogen that generally is not a problem if good management practices are followed. It is possible to prevent or treat a reportable pathogen. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries. These pathogens are of concern because of their possible effect on commerce in aquatic animals (see R58-17-20).

(27) "Source" means the rearing or holding environment of an aquatic animal.

(28) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required (see R58-17-20).

R58-17-3. Penalties.

Any violation of or failure to comply with any provision of this rule or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9 and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

R58-17-4. Certificate of Registration (COR) Required.

(A) Activities requiring a COR:

(1) A COR, issued by the Department, is required before a person may engage in the following activities within the State of Utah:

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a fish processing plant.

(2) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:

(a) public aquaculture facilities;.

(b) private fish ponds (R657-16-10);

(c) institutional aquaculture facilities (R657-16-13);

(d) short term fishing events (R657-16-11);

(e) private stocking (R657-16-12);

(f) displays (R657-16-14).

(3) One of the above CORs must be in place prior to the issuance of an entry permit for importing live aquatic animals into Utah.

(B) No refunds may be given. Sales of CORs are final.

R58-17-5. Species Allowed.

(A) Pursuant to Department of Natural Resources rule R657-3, only those species approved by the Wildlife Board and listed on the COR may be used in conjunction with the activity listed on the COR.

(B) Pursuant to 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.

(C) The Department will insure that the species described on CORs and entry permits issued by the Department are those approved by the Division.

R58-17-6. Qualifying Waters.

(A) An aquaculture facility, fee-fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels. Other water, including canals, offstream reservoirs, and excavated ponds or raceways will be considered for use as an aquaculture or fee-fishing facility.

(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to R58-17-6(A), 4-37-111, 4-37-201(3) and 4-37-301(3).

R58-17-7. Screens Required.

(A) Screens or other devices that are designed to prevent the movement of fish into or out of an aquaculture facility, fee-fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs.

(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.

(C) During and following the COR application process, the Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) during reasonable hours.

(D) It is the responsibility of the COR holder to report to the Department or Division, depending on which agency issued the COR, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder and/or facility operator will bear all costs for remedial actions. The Department or Division shall notify all agencies and affected parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.

R58-17-8. Application and Renewal of Certificates of Registration (CORs).

(A) Application process.

(1) For application procedures pursuant to R58-17-4, contact the Fish Health Program of the Department at 350 N. Redwood Road, Box 146500, Salt Lake City, UT 84114-6500 or the Wildlife Registration Office of the Division at 1594 West North Temple, Suite 2110, Salt Lake City, UT 84114-6301.

(2) The application form must be completed and sent to the appropriate address with the required fee. Forms that are incomplete, incorrect or not accompanied by the required fee may be returned.

(3) Department or Division approval of the site and species will be done at the earliest possible date. The Department will make every effort to process applications submitted to it within two weeks pursuant to 4-37-201(3) and 4-37-301(3). Pursuant to R657-16-4, applications submitted under the jurisdiction of the Division require up to 45 days for processing, except for short-term fishing events, which require up to 10 days.

(4) Upon approval, a written COR and COR number will be issued. This certificate will be sent to the facility owner or operator and should be filed for 2 years pursuant to Section 4-37-110.

(5) If the application is denied, a written explanation will be sent to the applicant.

(B) Renewal process.

(1) All CORs are valid for the calendar year issued and will remain valid until January 31 of the following year unless renewed sooner.

(2) CORs are renewed annually by submitting a completed application and the required fee to the Department or Division, and by complying with all other applicable renewal criteria.

(3) Failure to renew the COR annually may result in the loss of health approval, denial of future CORs, and the removal or destruction pursuant to R58-17-13(G) of the live or dead aquatic animals at the facility. Removal or disposal of live or dead aquatic animals is the responsibility of the owner and shall be done by means acceptable to the Department.

(C) CORs are not transferrable.

R58-17-9. Reporting Fish Diseases.

Persons involved in aquaculture and being regulated by this rule, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures developed by the Fish Health Policy Board in determining reporting and response procedures. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Fish Health Policy Board.

R58-17-10. Quarantine of Aquatic Animals and Premises.

(A) If evidence exists that the aquatic animals of any facility are infected with or have been exposed to pathogens pursuant to R58-17-15(D)(2) and (3), then a quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian. This action may be reviewed by the Fish Health Policy Board for recommendations to the Department.

(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires a minimum of two negative tests, six months apart, of all lots of fish to verify the absence of the pathogen. In addition, the Department may require disinfection of the facilities and equipment in accordance with current medical knowledge of the organism, American Fisheries Society Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed.

(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to protect aquatic animals within the state. This action may be reviewed by the Fish Health Policy Board for recommendations to the Department.

(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the facility. In addition, the Department may require disinfection of the facilities and equipment in accordance with current medical knowledge of the organism, American Fisheries Society Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed.

(C) Any person under quarantine who delivers aquatic animals from health-approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or disinfects the truck according to Department recommendations each time it leaves the quarantined facility.

R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in R58-17-15(D).

(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may place a quarantine and take steps to prevent the spread of the pathogen and to eliminate it from the facility. These actions may be reviewed by the Fish Health Policy Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below, depending on which pathogen is involved and the potential effects of the pathogen on the receiving water, neighboring aquaculture facilities or the public fishery resource.

(1) Destruction and disposal of all infected and exposed aquatic animals.

(2) Cleaning and disinfection or disposal of all handling equipment.

(3) Testing is required of all lots of fish, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel fish. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed. Following removal of the quarantine, full restocking can begin.

(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested every 6 months or sooner to determine if the pathogen persists in infecting the aquatic animals. At the end of the production cycle, then testing shall be done at least annually. If the pathogen is not found after two consecutive annual inspections, then testing may revert to the original requirements for the facility. If security of the facility cannot or is not being maintained, immediate destruction of the stocks may be required.

R58-17-12. Statement of Variances.

Circumstances may arise which cannot be adequately addressed or resolved with this rule. The Fish Health Policy Board may grant specific variances to the rule if the following conditions are met:

(A) The variance is based on scientifically sound information and rationale.

(B) The variance will cause no threat to other aquaculture operations, state or private, or to wild fish populations.

(C) The variance is documented appropriately.

R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.

(A) An official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah from any location outside the state. This permit is in addition to the COR for operation of the facility. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:

(1) Name, address, phone number and COR number of importer.

(2) Species, size and/or number of aquatic animals or eggs to be imported.

(3) Name and health approval number of sources, origin of aquatic animals/eggs, transfer history, and approximate date of shipment.

(4) For international shipments, a certificate of veterinary inspection from the source must be obtained by the importer indicating that known nuisance species are not found in the water source.

(B) Each shipment of live aquatic animals/eggs must be approved individually. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow one to two weeks for the Department to verify the health approval status of the source and to verify approved species status pursuant to R58-17-5.

(C) All shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to R58-17-15(A)(2) and assigned a fish health approval number. A list of approved sources is maintained by the Department, but cannot be published due to frequent updates. Information on approved sources may only be obtained by contacting the Department Fish Health Program.

(D) All importations must be species that have been approved by the Wildlife Board and the Division pursuant to R657-3 and 4-37-105(1).

(E) To import live grass carp (Ctenopharyngodon idella), a COR and an ENTRY PERMIT are required. In addition, the fish must also be verified as being triploid (sterile) by a source acceptable to the Department. A U. S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for the Asian tapeworm must be on file with the Department prior to shipment of the fish. Copies of the entry permit, treatment and testing statement and the triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

(F) The State Veterinarian may require treatment or testing of any aquatic animal species in accordance with current medical knowledge before importation.

(G) Whole dead and eviscerated fresh or frozen salmonid fish or live aquatic animals pursuant to R58-17-2(A)(16) may be imported into Utah for processing at a fish processing plant without an Entry Permit. Live salmonid fish may be imported into and transported within Utah for processing at a fish processing plant without an Entry Permit, but must be killed upon release from the transport vehicle and may not be held live at the fish processing plant. Waste products, i.e., brine shrimp cysts, carcasses, viscera and waste water, must be incinerated, buried with quick lime, composted, digested, or disposed of by means acceptable to the Department to deter spread of pathogens and non-native species pursuant to R657-3 by water or animals. The Department may apply the requirements in this section to other species of aquatic animals and pathogens if future needs arise.

(H) Placement of dead fish, fish parts, or fish waste products from a fish processing plant, or live or dead aquatic animals from any facility into public waters is illegal. Proper disposal is the responsibility of the processor/owner/broker pursuant to R58-17-13(G).

(I) All transport vehicles, carrying aquatic animals imported into Utah or transported through Utah pursuant to R58-17-14(C), must have proper documentation. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.

R58-17-14. Buying, Selling, and Transporting Aquatic Animals.

(A) Buying aquatic animals:

Live aquatic animals, except ornamental fish, may be purchased or acquired only by persons who have a valid COR to possess such animals. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in-state and have a valid COR for commercial aquaculture or are located outside of Utah. In both cases, the sources must also be on the current fish health approval list.

(B) Selling aquatic animals:

Live aquatic animals, except ornamental fish, may be sold only by a person or entity located in-state who possesses a valid COR for aquaculture or by a person located outside of Utah. Current listing for each species on the fish health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals.

(C) Transporting aquatic animals:

(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to their facility or approved site.

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish, must be accompanied by documentation of the source and destination, including:

(a) Name, address, phone number, COR number and COR expiration date, fish health approval number and expiration date of source and transfer history.

(b) Species, size, number or weight being shipped.

(c) Name, address, phone number, COR number and COR expiration date of the destination.

(d) Date of transaction.

(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out-of-state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) Any person who hauls fish may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species.

(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the diseases currently on the pathogen list, R58-17-15(D)(2) through (4), without first reporting it to the appropriate regulating agency pursuant to R58-17-9 and receiving written

authorization to move the aquatic animals.

(D) Brokers and Dealers:

(1) Brokers and Dealers must follow the same requirements that other producers do with respect to importation, fish health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.

(2) To gain fish health approval, brokers and dealers must obtain health approval for all their source facilities.

R58-17-15. Aquatic Animal Health Approval.

(A) Live aquatic animals, except ornamental fish, may be acquired, purchased, sold or transferred only from sources which have been granted health approval by the Department and assigned a fish health approval number. This applies to separate facilities owned by the same individual and to both in-state and out-of-state facilities.

(1) Within Utah, the Department shall be responsible for granting health approval and assigning an aquatic animal health approval number to aquaculture facilities, fee-fishing facilities and any out-of-state sources pursuant to amendment 4-37-501(1). The Division shall be responsible for granting health approval and assigning an aquatic animal health approval number to public aquaculture facilities within the state, private fish ponds within the state, and wild populations of aquatic animals in waters of the state pursuant to amendment 4-37-501(1).

(2) The Department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.

(3) The Fish Health Policy Board may review health approval actions of the Department and/or the Division.

(B) Basis for Health Approval:

(1) Health approval for salmonid species is based on the statistical attribute sampling of fish from each lot on the facility in accordance with current American Fisheries Society Blue Book procedures. This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier incidence for the prohibited pathogens, pursuant to R58-17-15(D)(2) and (3). Health approval is applied to the entire facility, not individual lots of fish.

(2) All lots of fish shall be sampled. Approval will be withheld if a pathogen listed under R58-17-15(D)(2) or (3) is detected in any of the lots.

(3) For brood facilities, lethal sampling may be required on the brood fish if the following conditions are not met:

(a) Progeny are available at the facility for lethal sampling.

(b) A statistically valid sample of ovarian fluids from ripe females is tested.

(4) Collection, transportation and laboratory testing of the samples will follow standard procedures specified by the Department, the Division and the Fish Health Policy Board. Inspections will be conducted under the direction of an individual who has received certification by the American Fisheries Society as a fish health inspector.

(5) EGG ONLY sources - A facility which cannot gain full fish health approval because of a horizontally transmitted pathogen, may be approved to sell eggs provided they are free of the listed vertically transmitted pathogens pursuant to R58-17-15(D)(1) and are properly disinfected using approved methods prior to shipment. Eggs may be required to be from incubation units isolated from hatchery and open water supplies and to be from fish-free water sources.

(6) Health approval for warm water species is based on disease history information obtained from the producer, fish pathologists or other fish health professionals in the producer's state or locale. Standardized inspection protocols for warm water fish diseases have not been developed. The agency having responsibility will discuss the disease history of the facility with the producer, and then may contact local fish health professionals to identify any existing or potential disease problems.

(7) Under no circumstances shall health approval be granted to a facility using emergency prohibited or prohibited pathogen contaminated water as a source.

(C) Approval Procedures:

(1) Applicable to warm and cold water aquatic animals.

(a) To receive initial fish health approval, inspection reports or other evidence of the disease status of an aquaculture facility or public aquaculture facility must be submitted to the appropriate agency. For warm water aquatic animal approval, the "Application for Warm Water Species Fish Health Approval " form must be submitted for initial approval and for renewal pursuant to R58-17-15(B)(6). Initial approval also requires the applicant to include information on origins of the aquatic animals at the facility and their transfer histories. The same application materials shall be required annually for renewal of fish health approval for activities occurring between applications.

(b) Inspections are conducted pursuant to UCA amendment 4-37-502 to detect the presence of any prohibited pathogens listed under R58-17-15(D)(2) and (3). Overt disease need not be evident to disqualify a facility. To qualify for initial and renewal of aquatic animal health approval, evidence must be available verifying that any prohibited pathogens listed under R58-17-15(D)(2) and (3) are not present.

(c) Once the requirements for initial approval or renewal of approval have been met, the facility shall be added to the fish health approval list of the responsible agency and assigned a fish health approval number for the current year. Fish health approval of each facility shall be reviewed annually for continuance on the lists maintained by the Department and the Division pursuant to R58-17-15(A)(1).

(d) The Department will report the confirmed results of annual inspections conducted at aquaculture facilities, fee fishing facilities, and out-of-state sources at each meeting of the Fish Health Policy Board.

(e) Public aquaculture facilities and wild brood stocks are included on the fish health approval list maintained by the Division. The Division will report the confirmed results of annual health inspections conducted at public aquaculture facilities, private ponds and wild populations of aquatic animals at each meeting of the Fish Health Policy Board.

(f) If all aquatic animals are removed from an approved facility for a period of three months or more, or if fish health approval is canceled or denied, then subsequent fish health approval will be granted only after the facility has completed the process for initial approval as outlined under R58-17-15(C).

(2) Applicable to cold water aquatic animals:

(a) For initial approval of new facilities, two inspections of the same lot, at least four months apart and negative for any prohibited pathogen pursuant to R58-17-15(D)(2) and (3), are required. The aquatic animals must have been on the facility at least six months prior to the first inspection.

(b) For initial approval of existing facilities, health inspection reports for a minimum of the previous two years, and facility disease history reports for up to the previous five years and five-year disease histories for all stocks imported to the facility are required.

(c) All lots of aquatic animals on the facility as well as any outside sources of these aquatic animals must be inspected for initial approval and for renewals pursuant to R58-17-15(B)(4).

(d) After initial approval, annual inspections shall be required to renew fish health approval. A two-month grace period is granted at the completion of the annual inspection for laboratory testing of samples and reporting of test results. Health inspection reports, the facility disease history for at least the previous year, and disease histories for at least the previous

year for all stocks imported to the facility shall be required before each renewal.

(D) Prohibited and reportable pathogen list:

(1) Pathogens requiring some form of action are classified as either emergency prohibited, prohibited, or reportable. Those pathogens denoted by an asterisk (*) preceding the name will only be tested for if the fish or eggs originate from an area where the pathogen is found. Pathogens denoted by a double asterisk (**) after the name can only be transmitted in fish and not in the eggs, therefore permitting the special provisions for egg only sources provided in Sections R58-17-2(8) and R58-17-15(B)(5).

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

(3) Prohibited pathogens.

(a) Myxobolus cerebralis (pathogen that causes whirling disease)**.

(b) Renibacterium salmoninarum (pathogen that causes bacterial kidney disease (BKD)).

(c) *Ceratomyxa shasta (pathogen that causes the disease ceratomyxosis)**.

(d) Bothriocephalus (Asian tapeworm and cause of the disease bothriocephalosis).**

(e) *PKX (pathogen that causes proliferative kidney disease (PKD))**.

(4) Reportable pathogens.

(a) Yersinia ruckeri (pathogen that causes enteric redmouth)**.

(b) Aeromonas salmonicida (pathogen that causes furunculosis)**.

(c) Emerging fish pathogens (including any filterable agent or agent of clinical significance as determined by the Fish Health Policy Board).

(5) The Fish Health Policy Board Procedures for the Timely Reporting of Pathogens shall be followed if any emergency prohibited, prohibited, or reportable pathogen is found. Inspection for reportable pathogens is optional, but positive findings of these pathogens must be reported to the Fish Health Policy Board. Reporting of unregulated pathogens to the Fish Health Policy Board is not required.

(6) The Fish Health Policy Board Emergency Response Procedures shall be activated any time a confirmed finding or unconfirmed evidence of an emergency prohibited or prohibited pathogen is reported.

R58-17-16. Inspection of Records and Facilities.

(A) The following records must be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency representative pursuant to R58-17-4.

(1) Records of purchases, acquisition, distribution, and production histories of live aquatic animals.

(2) CORs and entry permits.

(3) Valid identification of stocks, including origin of stocks.

(B) The appropriate agency representatives may conduct pathological or physical investigations at any registered facility pursuant to R58-17-4 during reasonable hours if there is cause to believe that a disease condition exists. Any laboratory testing that is necessary as a result of this investigation will not be at the owner's expense.

R58-17-17. Aquaculture Facilities.

(A) COR required:

A COR is required to operate an aquaculture facility. A separate COR and fee are required for each individual facility as defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live aquatic animals may be sold or transferred:

The operator of an aquaculture facility with aquatic animal health approval may take the aquatic animals as approved on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Fish Processing plants dealing with salmonids shall neither hold nor sell live salmonids pursuant to R58-17-2(A)(16).

(C) Fee-fishing facility and/or processing plant allowed:

The operator of an aquaculture facility may also operate a fee-fishing facility under the terms applicable to fee-fishing facilities in Section R58-17-18 and/or a fish processing plant pursuant to R58-17-17 and R58-17-13(G) and (H), provided the fee-fishing facility or the fish processing plant is located at the site and within one half mile distance from the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.

(D) Receipts required:

Any sale, shipment or transfer of live fish from an aquaculture facility must be accompanied by a receipt with documentation of the source and destination. A receipt book will be provided by the Department upon request. Copies of all receipts will be submitted to the Department and will serve as the annual report of sales. The receipt book is to be used for in-state sales or transfers, and will contain the following information:

(1) Names, addresses, phone numbers, COR numbers, COR expiration dates, fish health approval numbers and expiration dates of sources.

(2) Number and weight being shipped, by species.

(3) Names, addresses and phone numbers of destinations.

(4) COR numbers and COR expiration dates for destinations (for in-state transfers only).

(5) Dates of transactions.

(6) Signature of seller.

(E) Annual reports required:

Annual reports of all sales, transfers, and purchases must be submitted to the Department as part of the COR renewal process, pursuant to Subsection R58-17-8(B)(2). A report form for all purchases or transfers into a facility will be provided by the Department.

(1) For all purchases, this report will contain the following information:

(a) Names, addresses, phone numbers, COR numbers and fish health approval numbers of sources.

(b) Number and weight by species.

(c) Names, addresses, phone numbers, COR numbers of the destinations.

(d) Dates of transactions.

(2) For all sales or transfers, copies of the receipt book transactions pursuant to R58-17-17(D), will be submitted to the Department.

(3) The records and reports must be submitted to the Department by December 31 each year and must be received before a COR will be renewed.

(4) The report made by operators of fish processing plants shall contain source names, addresses, phone numbers, species names, and live or dead state for all purchases and transfers to and from the facility. The report shall address proper methods of disposal with dates and locations pursuant to R58-17-13(G) and (H). Brine shrimp processing plants shall prepare an annual report with the above information for non-Great Salt Lake brine shrimp or other aquatic invertebrates imported into Utah.

(F) Fees assessed:

A COR for an aquaculture facility shall be assessed a fee of $150.00 during application and annually for renewal, pursuant to Section 4-37-301. Only fish processing plants that

work with fin fish are assessed this fee. The deadline for COR renewal is December 31. If the COR renewal application is not received by February 28, the COR will be no longer valid and regulatory action shall be initiated pursuant to R58-17-8(B)(3).

R58-17-18. Fee-Fishing Facilities.

(A) COR required:

A COR is required to operate a fee-fishing facility. A separate COR is necessary for separate fee-fishing facilities as defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live sales or transfers prohibited:

The operator of a fee-fishing facility may not sell, donate, or otherwise transfer live aquatic animals, except that the approved species may be transferred into the facility from an approved source.

(C) Fishing licenses not required:

A fishing license is not required to take aquatic animals from a fee-fishing facility.

(D) Receipts required:

To transport dead aquatic animals away from a fee-fishing facility, the operator must provide a receipt to the customer which contains the following information:

(1) Name, address, COR number, COR expiration date and phone number of fee-fishing facility.

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

The operator of a fee-fishing facility must submit to the Department an annual report of all live aquatic animals purchased or acquired during the year. A report form for all purchases or transfers into a facility will be provided by the Department. This report must contain the following information:

(1) Names, addresses, phone numbers, fish health approval numbers of all sources and/or COR numbers and COR expiration dates.

(2) Number and weight by species.

(3) Dates of sales or transfers.

(4) Names, addresses, phone numbers, COR numbers and COR expiration dates of the destinations.

(F) Fees assessed:

A fee of $30.00 shall be required with the application for the fee-fishing COR. This fee shall be required annually with the reports for COR renewal, pursuant to 4-37-301. The deadline for COR renewal is December 31. If the COR renewal application is not received by February 28, the COR will be no longer valid and regulatory action shall be initiated pursuant to R58-17-8(B)(3).

R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.

Details on the COR and regulatory requirements pursuant to R58-17-4(2) for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in the code for Natural Resources, Wildlife Resources, at Rule R657-16 of the Utah Administrative Code.

R58-17-20. Classification of Pathogens.

TABLE

Classification	Criteria	Control Methods	Included Pathogens (and diseases they cause)
Emergency	High morbidity High mortality Exotic to Utah Immediate action required	Cannot be treated Avoidance, eradication and disinfection	IHNV IPNV VHSV OMV
Prohibited	Can cause high morbidity or high mortality	Very difficult or impossible to treat	Myxobolus cerebralis (whirling disease)
	May be endemic to Utah Action required in reasonable time frame	Avoidance, eradication and disinfection	Renibacterium salmoninarum (BKD) Ceratomyxa shasta PKX organism (PKD) Bothrio-cephalus acheilognathi (Asian tapeworm)
Reportable	Management diseases Not prohibited in Utah Prohibited in some other states or countries Economic importance Inspection is optional Positive findings must be reported to the Fish Health Policy Board	Possible to prevent or treat	Yersinia ruckeri (Enteric redmouth) Aeromonas Salmonicida (furun-culosis) Emerging fish Pathogens (including but not limited to any filterable agent or agent of clinical significance as determined by the Fish Health Policy Board)
Unregulated	Not regulated in Utah Includes all pathogens not listed above Reporting to the Fish Health Policy Board not required		

KEY: aquaculture
April 17, 2001 4-2-2
Notice of Continuation February 3, 2005 4-37

R58. Agriculture and Food, Animal Industry.
R58-21. Trichomoniasis.
R58-21-1. Authority.

Promulgated under authority of Section 4-31-21.

R58-21-2. Definitions.

Total Confinement Operation - means a dry lot feeding operation where none of the sexually active animals are allowed access to pasture, or to mingle with other cattle outside the confines of the premise.

Commuter Cattle - means cattle traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians, or cattle traveling on a Certificate of Veterinary Inspection where there is no change of ownership.

Official Test - means one where the sample is collected by an accredited veterinarian approved by the department and which is received by the lab within 24 hours of collection. The sample should be transported on acceptable media and maintained at 65 to 90 degrees Fahrenheit. Test samples not meeting this criteria will be discarded and a new sample collected. Acceptable media shall be Diamond Media, or the In Pouch method, or other department approved transport media. The inoculated media shall be incubated at 37 degrees centigrade and monitored for growth at 24 hour intervals for 96 hours. An Official State of Utah Trichomoniasis Test Tag or similar official tag from another state shall be placed in the right ear of any bull so tested.

Qualified Feedlot - means a feedlot approved by the Utah Department of Agriculture and Food to handle INTRASTATE heifers, cows, or bulls which originate from Utah herds. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter.

Positive Herd - means any herd or group of cattle owned by one or more persons which shares common grazing or feeding operations and in which one or more animals has been diagnosed to be infected with trichomoniasis within the last 12 months.

Department - means the Utah Department of Agriculture and Food.

Brand - means a 2 X 3 hot iron single character lazy V applied to the left of the tail of a bull, signifying that the bull is infected with the venereal disease, Trichomoniasis.

Exposed to female cattle - means freedom from restraint such that breeding is a possible activity.

Feeder Bulls - means bulls not exposed to female cattle and kept in total confinement operations for the purpose of feeding and eventual slaughter.

R58-21-3. Trichomoniasis - Rules - Prevention and Control.

All bulls nine months of age and older, entering Utah, must be tested for Trichomoniasis by an accredited veterinarian within 30 days prior to entry into Utah. Exceptions include: 1) bulls going directly to slaughter or to a qualified feedlot, 2) feeder bulls kept in total confinement operations, 3) rodeo bulls for the purpose of exhibition, and 4) bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin. Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry. Any Certificate of Veterinary Inspection issued for bulls covered under this rule shall bear the statement, Trichomoniasis has not been diagnosed in the herd of origin within the last 12 months, except that, bulls from herds that have tested positive for trichomoniasis within the previous 12 months are required to have three negative tests, no less the one week apart, prior to entry into Utah.

All bulls nine months of age and older residing in Utah, and all commuter bulls must be tested with an official test for trichomoniasis annually, between October 1 and May 31 of the following year, and prior to exposure to female cattle. After May 31, owners of untested bulls may be fined $200 per head. Owners of untested bulls that have been exposed to female cattle may be fined up to $500 per head regardless of the time of year. Testing shall be performed by an accredited veterinarian who has been certified to perform testing for trichomoniasis. All bulls from positive herds are required to have three negative tests, no less than one week apart, prior to exposure to female cattle. Exceptions include bulls going to slaughter or to a qualified feedlot, dairy bulls in total confinement operations, and feeder bulls in total confinement operations which are not exposed to female cattle.

All bulls nine months of age and older being offered for sale for reproductive purposes in the state of Utah must be tested for Trichomoniasis with an official test within 30 days prior to sale and shall bear a current official Trichomoniasis test tag. Bulls that have had contact with female cattle subsequent to testing must be re-tested prior to sale.

It shall be the responsibility of the owner or his agent to declare, on the auction drive-in slip, the Trichomoniasis status of a bull being offered for sale at a livestock auction. Untested bulls (i.e. bulls without a current Trichomoniasis test tag), including dairy bulls, may be sold for slaughter only, or for direct movement to a Qualified Feedlot or Total Confinement Operation.

Any bull over nine months of age which is found estray and commingles with another producers female cattle may be required to be tested (or re-tested) for trichomoniasis. The owner of the offending bull shall bear all costs for the official test.

All Utah bulls, which are tested, shall be tagged in the right ear with a current Official State of Utah Trichomoniasis test tag by the accredited veterinarian performing the test. Official tags shall be only those as are authorized by the department and approved by the State Veterinarian office. The color of the approved tag shall be changed yearly. Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by an accredited veterinarian upon receipt of the Trichomoniasis test charts from the testing veterinarian. Bulls which bear a current Trichomoniasis test tag from another state which has an official Trichomoniasis testing program will be acceptable to the State of Utah.

All bulls testing positive for Trichomoniasis must be reported immediately to: 1) the owner, and 2) the State Veterinarian, by the veterinarian performing the test. The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattleman within ten days following such notification by his veterinarian or laboratory.

All bulls which test positive to Trichomoniasis must be sent by direct movement within 14 days, to: 1) slaughter at an approved slaughter facility, or 2) to a Qualified Feedlot for finish feeding and slaughter, or 3) to an approved auction market for sale to one of the above facilities. Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official. Positive bulls entering a Qualified Feedlot, or Approved Auction Market shall be identified with a lazy V brand on the left side of the tail, indicating that the bull is infected with the venereal disease, Trichomoniasis.

A bull is considered positive if Trichomonas organisms are identified when cultured by the examining veterinarian or laboratory. An owner may have the option to request submission of the positive sample to an approved reference laboratory for confirmation by Polymerase Chain Reaction (PCR). As prerequisites to exercising this option, the bull must be 16 months of age or younger and the sample must arrive at the laboratory within 48 hours of being found positive. A sample determined by PCR not to be T. foetus will be

considered negative. A sample found to be inconclusive will be considered positive. A bull determined to be negative for T. foetus by PCR must be subsequently tested negative by culture prior to being offered for sale and no sooner than one month after the PCR.

Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with Trichomoniasis, other than to slaughter, without declaring their disease status shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

KEY: disease control
March 4, 2004 4-31-21
Notice of Continuation February 3, 2005

R58. Agriculture and Food, Animal Industry.
R58-22. Equine Infectious Anemia (EIA).
R58-22-1. Authority.

Promulgated under authority of Title 4, Chapter 31 and Subsections 4-2-2(1)(c), 4-2-2(1)(j).

The intent of these rules is to eliminate or reduce the spread of Equine Infectious Anemia among equines by providing for a protocol for testing and handling of equines infected and exposed to Equine Infectious Anemia.

R58-22-2. Definitions.

Accredited Veterinarian – means a veterinarian approved by the Deputy Administrator of USDA, APHIS, VS in accordance with provisions of 9 CFR Part 161.

Coggins test – means a common name for the Agar Gel Immuno-diffusion (AGID) test for diagnosis of EIA.

Equine – means any animal in the family Equidae, including horses, asses, mules, ponies, and Zebras.

Equine Infectious Anemia (EIA) – means an infectious disease of equines caused by a lentivirus, equine infectious anemia virus (EIAV). The disease is characterized by three distinct clinical forms: acute, chronic and inapparent.

Identification – means permanent notation of equines that are determined to be EIA reactors by application of a hot iron, or freeze marking using the National Uniform Tag code number for the State of Utah (87), followed by the letter "A" on the left side of the neck or left shoulder.

Official test – means any test for the laboratory diagnosis of EIA that utilizes a diagnostic product that is (1) produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum- Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.); and (2) conducted in a laboratory approved by the Administrator of APHIS.

Reactor – means any equine that has been subjected to an official laboratory test whose result is positive for EIA.

Exposed Animals – means all equines that have been exposed to EIA by reason of association with the affected animal.

R58-22-3. Equine Infectious Anemia – Rules – Prevention and Control.

The State Veterinarian shall have authority to conduct or supervise testing at an official laboratory to diagnose EIA and to quarantine and order disposition of any individuals or herds that are found to be positive for EIA, at such time as may be deemed necessary for the control and elimination of EIA., as granted under Section 4–31–16.

Personnel authorized to submit samples, approved laboratories, and official tests shall be those identified in the Uniform Methods and Rules, USDA, APHIS 91-55-037 Part II, B, C, and D, effective January 1, 1998, or subsequent revisions.

Procedures for handling equines which are classified as reactors:

Quarantine – When an equine has a positive result on an official test for EIA, the animal shall be placed under quarantine within 24 hours after positive test results are known and a second, confirmatory, test shall be performed under the direction of the state veterinarian. The equine shall remain in quarantine until final classification and disposition is made. Equines which have been located within 200 yards of the infected animal shall be quarantined and tested also.

Repeat testing and removal of reactors – When a reactor is disclosed in a herd, and removed, testing of all exposed equines for EIA must be repeated at no less than 45 day intervals until all remaining equines on the premise test negative, at which time the quarantine may be removed.

Identification of reactor equines – Equines that are determined to be reactors must be permanently identified using the National Uniform Tag code number for Utah (87) followed by the letter "A". Markings must be permanently applied using a hot iron, or freeze marking by an APHIS representative, State representative, or accredited veterinarian. The marking shall be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Official identification is not necessary if the reactor is moved directly to slaughter under a permit and is in a conveyance sealed with an official seal.

Euthanasia and disposal – Once an equine has been classified as a reactor, it must be removed from the herd. This can be accomplished by euthanasia or removal to slaughter. If slaughter is chosen, the equine must be moved either to a federally or state inspected slaughtering establishment per the Code of Federal Regulations, Part 75.4. If euthanasia is chosen, the animal must be properly buried six feet underground and the carcass treated above and below with lime.

R58-22-4. Importation of Equines.

A. Equines imported to Utah shall be in compliance with R58-1-6.

KEY: inspections

August 2, 2000	**4-2-2(1)(c)**
Notice of Continuation February 3, 2005	**4-2-2(1)(j)**

R68. Agriculture and Food, Plant Industry.
R68-20. Utah Organic Standards.
R68-20-1. Authority.

Promulgated under authority of Sections 4-2-2(1)(j), 4-3-2, 4- 4-2, 4-5-17(1), 4-9-2, 4-11-3, 4-12-3, 4-14-6(5), 4-16-3, 4-32-7(7)(a)(ii), 4-37-109(2).

A. The Utah Department of Agriculture and Food (UDAF) adopts and incorporates by reference CFR, December 2000 edition, Title 7 Part 205, National Organic Program Final Rule and amendments in Title 7 Part 205.600, Subpart G, The National List of Allowed and Prohibited Substances, effective November 4, 2003.

1. UDAF will make available to all its applicants for certification and producers of organic products, copies of the National Organic Program Final Rule.

R68-20-2. Definitions and Terms.

A. For the purpose of this rule, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

1. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's representative.

2. "Distributor" means a handler that purchases products under its own name, usually from a shipper, processor, or another distributor. Distributors may or may not take physical possession of the merchandise. A distributor is required to be certified if that person both takes title to the organic products and substantially transforms, processes, repackages or re-labels these products.

3. "Food (and food products)" means material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, and minerals, that is taken in and assimilated by an organism to maintain life and growth. Food products include all agricultural and horticultural products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, dairy products and aquaculture products.

4. "Registration" means an agreement or contract that grants a certified operator the right to use a certificate or certification mark in accordance with organic standards and certification requirements.

5. "Utah Department of Agriculture and Food Organic Seal" means the seal to be displayed on packaging of certified organic foods and food products intended for retail sale, indicating compliance with provisions of this rules.

R68-20-3. Compliance.

A. Violations of the State Organic Program will be handled in compliance to Section 4-2-12.

R68-20-4. Fees for Organic Certification.

Fees for Organic Certification Services.

A. Fees shall be in accordance with the fee schedule in the annual appropriations act passed by the Legislature and signed by the Governor. The person, firm, corporation or other organization requesting registration as a producer, handler, processor or certification agency or requesting inspection or laboratory services shall pay such fees. All fees are payable to the Utah Department of Agriculture and Food.

B. Registration of producers, handlers, processors or combinations thereof. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all producers, handlers, processors or combinations thereof and shall be paid by April 1 each year.

C. Registration of Certification agencies Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all certification agencies and shall be paid by April 1 each year.

D. Gross sales fees. Payment of annual gross sales fees shall accompany the annual registration application and fees and shall be based on the previous year's gross sales of state certified producers and processors.

R68-20-5. UDAF Seal.

Use of the UDAF Organic Seal

A. The UDAF seal may be used only for raw or processed agricultural products in paragraphs (a), (b), (e)(1), and (e)(2) of CFR 205.301.

B. The UDAF seal must replicate the form and design and must be printed legibly and conspicuously.

1. On a white background with a double black circle the words, Utah Department of Agriculture and Food, within the borders of the circles. At the bottom of the circle a teal green horizontal line.

2. Within the inner circle a black outline of the State of Utah, and inscribed in italics in a teal green color, slanting upward from left to right, the word "Certified Organic".

3. A copy of the seal is available at the Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500.

KEY: inspections

April 1, 2004	**4-2-2(i)(j)**
Notice of Continuation February 4, 2005	**4-3-2**
	4-4-2
	4-5-17(1)
	4-9-2
	4-11-3
	4-12-3
	4-14-6(5)
	4-16-3
	4-32-7(7)(a)(ii)
	4-37-109(2)

R70. Agriculture and Food, Regulatory Services.
R70-440. Egg Products Inspection.
R70-440-1. Authority.

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

B. Scope: This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

R70-440-2. Adopt by Reference.

Accordingly, the division adopts the egg products inspection standards and procedures as specified in Animal and Animal Products, 9 CFR Chapter III, Sub-Chapter I, Parts 590 and 592, January 1, 2004 edition, which is incorporated by reference within this rule.

KEY: food inspection
February 15, 2005 4-4-2

R131. Capitol Preservation Board (State), Administration.
R131-1. Procurement of Architectural and Engineering Services.
R131-1-1. Purpose and Authority.

(1) As provided by Subsection 63-56-14(1), this rule establishes procedures for the procurement of architectural and engineering services by the State Capitol Preservation Board.

(2) The Board's authority to adopt rules is provided according to Subsection 63C-9-301(3).

(3) As required by Subsection 63C-9-301(4), procurement of architectural and engineering services shall be conducted in accordance with this rule, the provisions of Title 63, Chapter 56, or of Title 63A, Chapter 5 as determined by the Board.

R131-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63-56-5.

(2) In addition:

(a) "Executive Director" means the Executive Director of the Capitol Preservation Board or authorized designee.

(b) "Office" means the staff and facilities of the executive-director to the Board pursuant to Sections 63C-9-401, and 402.

(c) "State" means the State of Utah.

R131-1-3. Maintaining a Register of Architectural/Engineering Firms.

The Board shall select registered and licensed architects and engineers that are interested in being considered for state building projects, from the DFCM register/list, prepared in accordance with Section R23-2-3, Utah Administrative Code.

R131-1-4. Notification of Need for Architectural/Engineering Services.

(1) The Board shall publish or cause to have published its needs for architectural/engineering services in the manner provided in Subsection R23-1-5(2). The public notice shall include the following:

(a) The closing time and date for the submission of Statement of Qualifications;

(b) The address of the office to which Statements of Qualifications are to be delivered;

(c) The address where a more complete project description may be obtained;

(d) A brief description of the project; and

(e) A notice of any mandatory pre-submittal meetings.

(2) The architects/engineers shall respond with a Statement of Qualifications for each project.

R131-1-5. Appointment of a Selection Committee.

The Executive Director shall appoint a selection committee to review all applications of interested architectural/engineering firms. The committee shall include representatives of the Board, the Office, the State Building Board, and others as deemed appropriate.

R131-1-6. Preliminary Screening and Evaluation.

(1) The selection committee shall independently rate each interested firm. A weighted point system shall be used. A ranking of those qualified firms shall be made by using a composite scoring of all the individual rater's scores.

(2) The following criteria shall be used in the evaluation and ranking of firms for possible awards:

(a) Competence to perform the services as reflected by technical training and education, specialized experience in providing similar services, and the qualifications and competence of persons who would be assigned to assist with the performance of the services;

(b) Capacity to perform the services in the required time as reflected by present workload, availability of adequate personnel, equipment, and facilities;

(c) Past performance as reflected by the evaluation of the services of the architect/engineer; including such factors as control of costs, quality of work, and ability to meet deadlines; and

(d) Proximity of firm to the project.

R131-1-7. Interviews with Architectural/Engineering Firms.

(1) For all projects, interviews shall be held with no less than the top three ranked firms competing for the project design commission. The number of firms interviewed per project may vary according to the size and complexity of the project. Multiple interviews may be held on smaller projects at the discretion of the Executive Director.

(2) Firms selected to be interviewed shall be provided with as much pertinent information as possible of the job at least one week prior to the interview.

(3) After composite rankings or interviews are completed, the selection committee shall select the top three and rank them in order of selection.

R131-1-8. Negotiation and Appointment.

(1) The Executive Director shall negotiate with the top-ranked architectural or engineering firm to finalize the details of the project. If there are problems with reaching agreement, the Executive Director shall present a written offer of the terms which must then be accepted or rejected in writing by the architectural/engineering firm. If the offer is rejected by the top-ranked firm, the Executive Director may negotiate with the second-ranked firm to obtain an agreement. If negotiations with the second-ranked firm are not able to be successfully concluded, the Office may negotiate with the third-ranked firm.

(2) Following completion of negotiations, the Executive Director will present the choice of the selected firm to the Board for approval, to enter into a contract with the selected firm. Upon Board approval, the Executive Director will enter into a contract with the selected firm. Other firms who were interviewed shall receive notification of award.

R131-1-9. Role of the Board.

(1) The Executive Director shall establish and monitor the selection process, may take appropriate steps to verify the acceptability of the procedure, and make changes in procedure at any time as may be determined necessary by the Board.

(2) At each meeting of the Board, the Executive Director shall submit a list of all architect/engineer contracts entered into, and a description of the method(s) of selection used to the Board as a second review of actions taken.

R131-1-10. Performance Evaluation.

(1) The Executive Director shall, throughout the course of, and at the end of the contract, evaluate the performance of the architectural/engineering firm; verbally and in writing. There shall be at least one verbal review of the architectural/engineering firm's performance on each project, prior to the project's completion. The Executive Director shall also advise the architectural/engineering firm, in writing, about their performance at the end of the project. If the firm wishes to respond to those evaluation(s), it may enter its response(s) in the file.

R131-1-11. Emergency Conditions.

The Executive Director, in consultation with the chairman of the Board, shall determine if it is necessary to respond to any emergency conditions that may occur. He shall also document his decision to take emergency action in writing. The Executive Director may use any reasonable method of awarding architect/engineer design contracts when emergency conditions occur. If the Executive Director determines that a particular specialization is needed, he may appoint any firm(s) he finds

may be necessary to accomplish work on the emergency project design.

R131-1-12. Direct Awards.

(1) The Executive Director may award a contract to an architectural/engineering firm without following the procedures of this rule if:

(a) The contract is for a project which is integrally related to, or an extension of, a project which was awarded to the architectural/engineering firm;

(b) The architectural/engineering firm performed satisfactorily on any similar or related project; and

(c) The Executive Director determines that the direct award is in the best interests of the State.

(2) The Executive Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

R131-1-13. Small Purchases.

(1) If the Executive Director determines that the services of architects and engineers can be procured for less than $50,000, or if the estimated construction cost of the project is less than $500,000, the procedures contained in Subsection (2) below, may be used.

(2) Before contacting any person to perform the required services, the Executive Director may refer to or examine any current statements of qualifications on file with the Office. Following that, the Executive Director may contact a qualified firm and negotiate a contract for the required services at a fair and reasonable price. If no current statements of qualifications are on file or if the statements on file are, in the judgment of the Executive Director, inadequate to determine a qualified firm, technical proposals or statements of qualifications shall be solicited. If, after negotiations, the parties cannot agree upon a price that, in the Executive Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated that reflects a fair and reasonable price and meets the necessary conditions of the project.

R131-1-14. Alternative Procedures.

(1) The Board may revise or enhance the procurement process whenever the Executive Director determines that it would be in the best interest of the State. Examples of enhancements or changes which may be made include design competitions and outside representation on selection committees.

(2) Any exceptions to this rule shall be justified to and approved by the Board.

KEY: architects, capitol-preservation, engineers, procurement
March 13, 2000 63C-9-101 et seq.
Notice of Continuation February 16, 2005

R131. Capitol Preservation Board (State), Administration.
R131-2. Capitol Hill Facility Use.
R131-2-1. Purpose.

The purpose of this rule is to provide for use of the State Capitol Facilities for continued operation of state government.

R131-2-2. Authority.

This Rule is authorized under Section 63C-9-301, which authorizes the State Capitol Preservation Board to adopt rules governing, administering and regulating the State Capitol Hill Facilities and Grounds managed by the State Capitol Preservation Board.

R131-2-3. Definitions.

(1) In addition to terms defined in Section 63C-9-102,

(a) "Board" - means the Capitol Preservation Board including the administrative office of the Board.

(b) "Capitol Hill Facilities and Grounds" - includes the State Capitol Building and Grounds, State Capitol parking facilities, cafeteria, State Office building and grounds, and excludes the greenhouses.

(c) "Commercial Activities" - means any activity not meeting the above criteria. If it is determined that a Commercial Activity will include any kind of endorsements for commercial purposes of products or services, such as an advertising production, the application may be denied.

(d) "Community Service Activities" - means an activity closely related to community service activities including public awards, public recognition and public benefits.

(e) "Executive Director" - means the executive director appointed by the Board under Section 63C-9-401.

(f) "Facility Use Application" - means a form that is to be completed by a prospective user, and approved by a resident agency, to reserve space for activities held within state-owned facilities. It shall require submission of the following information: (i) prospective user's name, address, and telephone number; (ii) the name of the facility being requested; (iii) the type of activity; (iv) the dates and times of the function; (v) insurance company, name and policy number, unless applicant is seeking a waiver under rule R131-2-4(22); (vi) any other special considerations being requested.

(g) "Facility Use Permit" - means a permit issued to users authorizing the permitted person(s) to use state-owned facilities for designated activities. The permit shall include the following information: (i) the name of the organization and individual authorized to use designated facility; (ii) the facility designated for use; (iii) purpose for use of the facility; (iv) the dates and times of the activity; (v) the fee assessed for the activity; (vi) the permit number; (vii) information required for compliance with R131-2-4(18); and (viii) the authorized resident agency representative's signature authorizing the activity.

(h) "Fees" - means charges assessed for use of state-owned facilities. The fees shall be assessed as follows:

(i) "Freedom of Speech Activities" shall be assessed a fee using a base cost commensurate with actual cost to the state; The "Base Cost" is the actual cost to the State for utilities, janitorial, security services and cost of rental for equipment used for activity.

(ii) "Commercial Activities" shall be assessed a fee comparable to fees charged for similar activities within the community; and

(iii) "Community Service Activities" shall be assessed a fee the same as first amendment activities.

The "Fee Schedule" is subject to change, and changes may be recommended to the Board by the Executive Director at any time. A fee schedule shall be provided to applicant at the time of application. The content of any first amendment activity shall not be a basis for calculating any portion of the fee.

(i) "Freedom of Speech Activities" - means an activity characterized as the right of a person or group to exercise freedom of speech or other first amendment right that is provided on government property by applicable law.

(j) "Governmental Activities" - means any activity directly related to governmental business. This does not include extra-curricular activities.

(k) "State" - means the state of Utah and any of its state officers, members of the legislature, members of the judiciary, departments, divisions, boards, agencies or commissions.

(l) "State Sponsored Activities" - means any activity directly sponsored by the state.

R131-2-4. General Provisions.

(1)(a) Each person(s) intending to use Capitol Hill Facilities and Grounds shall first submit a completed facilities-use-application. Applications shall be reviewed by the Board staff to determine the applicable category for activity-classification and fee-assessment. Applicants who disagree with any decision regarding activity-classifications or fees, may appeal using the process outlined in Rule R131-2-4(22).

(b) Upon approval of an application, the applicant shall schedule and obtain an authorization of activities in advance, from the Executive Director. The proposed activity shall not be authorized if it interferes with the operation of governmental business or public access.

(2) All rules in this section, apply to and cover the use of all Capitol Hill Facilities and Grounds.

(3) Users may schedule the Capitol Hill Facilities and Grounds for activities at reasonable times. Examples of activities at the Capitol Complex might include dances in the Rotunda, rallies on the front stairs of the Capitol and in designated areas on the grounds, and meetings in the State Office Building Auditorium.

(4) The state of Utah, any of its departments or divisions, any state employee shall not be responsible for any property damage or loss, any personal property damage or loss, or any personal injury sustained during, or as a result of, any activity.

(5) Every group granted a facility use permit will be required to complete an application form, provide the required fee, and provide a certificate of insurance showing proof of liability insurance in the amount of $1,000,000 per occurrence unless an exemption or waiver is granted by the board, or executive-director, in accordance with these rules.

(6) Users may not carry or post placards or signs attached to wood or metal posts of any type, within any building. In addition, users may not post signs on the grounds or the exterior of any building. Any signs or placards placed in Capitol Hill Facilities shall be hung with rope, cord or string. No adhesive materials or wire will be allowed. Balloons may be used but need to be tied with string to banisters or railings; they may not be handed out to participants of the activity or let loose.

(7) No temporary structure of any kind shall be constructed on Capitol Hill properties without the express written consent of the Capitol Preservation Board or the Executive Director.

(8) The use or storage of alcoholic beverages or any unauthorized or controlled drugs in any state-owned facility or on state grounds is prohibited.

(9) All "No Smoking" ordinances, rules and policies shall be strictly observed in all Capitol Hill Facilities.

(10) To protect the beauty of the State Capitol, and Capitol Hill Facilities, all decorations used for a scheduled activity shall be of a temporary nature and shall be appropriate for the dignity and beauty of the structure and shall be approved by the Board or the Executive Director.

(a) No adhesive material may be used that would leave a glue, paste, tape, oil, paint or other residue on the building.

(b) Nothing may be used as a decoration or in the process of decorating that would cause damage to the structure.

(c) No markings, paint or sprays may be applied to any area of the building.

(d) Decorating during the normal work hours shall be done in a manner that limits any disturbance to normal building activities. Any decorating during other than normal hours must be coordinated with the Board or the Executive Director.

(e) Decorating is to be done in a safe manner, using proper tools and equipment.

(f) Users may not decorate on the outside of the State Capitol or Capitol Hill Facilities.

(g) Signs, posters, decorations, displays, or markings must comply with all current pornography ordinances of the jurisdiction in which the facility is located.

(11) Food services in conjunction with a permitted use in state-owned facilities is subject to the approval of the Board or the Executive Director.

(12) Parking is available at all state-owned facilities. Users shall observe, and Protective Services will enforce, all restricted and marked parking areas.

(a) Vehicles owned or under control of participants shall not be parked in reserved parking areas, which shall include the parking plaza on Capitol Hill, and shall not be allowed to remain overnight.

(13) The user shall be responsible for any personal injury, vandalism, damage, or loss or other destruction of property or premises incurred during the activity.

(14) Any animals must be specifically approved in advance by the Board or the Executive Director and must provide assurance of safety to the animal, participants and the facility.

(15) No open flame, flammable fluids, or explosives shall be brought to or used on the premises.

(16) A User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the Board or the Executive Director.

(17) No money may be collected at Capitol Hill Facilities and Grounds; all tickets, if required, must be pre-sold.

(18) Users and participants must abide by all applicable firearm laws, rules, and regulations.

(a) The Board reserves the right to require users to notify the appropriate security agent of the anticipated presence of any person with a weapon or firearm.

(19) These general rules are incorporated into any permit issued and into all rules governing use of any Capitol Hill facility.

(20) No equipment shall be used nor activity engaged in which is contrary to applicable rules, regulations or state, local or governmental ordinances or codes.

(21) No equipment shall be used nor activity shall be engaged in which will place an excessive stress load on the building structure or building systems.

(22) Exceptions and Waivers.

(a) State activities, its state officers, members of the legislature, members of the judiciary, departments, divisions, agencies, boards and commissions are exempt from fees and insurance requirements to the extent that the activity is covered by state Risk Management.

(b) Governmental activities are exempt from fee and insurance requirements to the extent that the activity is covered by state Risk Management.

(c) Freedom of speech activities - a waiver of the fee or insurance costs, or a part thereof, shall be provided for free speech activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director or the executive director's designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request, describing the grounds for the decision within five days of the submission of the request for a waiver. The applicant may appeal and request to have a hearing before the Board within five days of notification. The persons hearing the appeal shall consist of three representatives of the Board. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any outside accessory items to the activity. The applicant may provide and use any accessory item for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable - proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah, including the current state provider of insurance.

(d) Community service activities - a waiver of the fee and/or insurance costs, or a part thereof, may be provided for community service activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee and/or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director or his designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request, describing the grounds for the decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the Board within five days of notification. The persons hearing the appeal shall consist of three representatives of the Board. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any accessory items to the activity. The applicant may provide and use own accessory items for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable - proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah including the current state provider of insurance.

(e) Commercial activities - no exceptions or waivers shall apply except the insurance may be waived if covered by State Risk Management. Adult chaperons will be required for commercial activities; the number, appropriate for the nature of the event and the number and ages of the users, will be determined by the Board or the Executive Director. Chaperons will help direct roaming guests. They will check rest rooms periodically, aid in maintaining reasonable behavior and enforcement of the rules.

R131-2-5. Use of Capitol Rotunda.

In addition to the provisions of Rule R131-2-4, the following rules for the Capitol Rotunda shall be observed:

(1) Public use of the Capitol shall not disrupt or interfere with any legislative session or state agency business. Safe, unhindered passageways must be provided at all times.

(2) A Facility Use request for permit for events in the Capitol Rotunda must be received in writing at least 24 hours in

advance of the time the event is proposed to commence. Priority will be given to state departments, agencies, and public school districts for use of the Capitol Rotunda. The Rotunda is available six days a week, Monday through Saturday. The facility has an established Fire Marshal occupancy limit of 2,700 people which shall not be exceeded.

(3) The sound level of any individual or group, whether amplified or not, must not disrupt or interfere with any legislative session or state agency business.

(4) The second floor of the Rotunda, marble stairways, and third floor balcony are available for use but access to the fourth floor, first floor, and basement areas is not allowed.

(5) For use of committee rooms, House of Representatives Chamber, Senate Chambers, or the Supreme Court, requests must be made directly to those agencies for scheduling.

(6) No fire exits, which shall include staircases and doorways, shall be blocked during any activity. Tables shall not be placed in front of, or so as to block, doorways in any manner.

(7) All vehicles coming to Capitol Hill in conjunction with the activity shall park on the south side of the Capitol Building, on the circular drive south of the Capitol known as Cherry Lane, or in the small visitor parking area or the main parking lot directly east of the Capitol.

(8) All deliveries and movement of equipment shall come to the north loading entrance, after 5:00 p.m., and shall use the south elevator between the first and second floors, unless prior arrangement has been made with the Board or the Executive Director.

(9) Elevators used to move equipment shall be protected from damage.

(10) All equipment brought into the building shall have rubber wheels, four inch or larger, or be hand carried so to cause no damage to facilities.

(11) Users shall remove all equipment, decorations and supplies by 12:00 midnight on the night of the activity unless specific arrangements are made in advance with the Board or the Executive Director.

(12) At least two uniformed security personnel are required for every 400 participants and will be included as a part of the base cost paid by user, unless a waiver is granted for unusual circumstances.

(13) State Capitol Protective Services personnel will determine the number of any or any additional uniformed security personnel needed for an activity, and will schedule their presence.

(14) Users shall control entrances to allow only those persons authorized to attend the activity to enter building.

(15) If any person or group is reasonably suspected of being in non-compliance with any of these rules, an appropriate State law enforcement officer may provide a warning to such person or group to cease and desist from such non-complying act. If a State law enforcement officer observes that an act of non-compliance continues after a warning, then a State law enforcement officer may have the person or group removed from the Capitol-Hill premises, and may take any other appropriate action as provided by law.

R131-2-6. Use of State Office Building Auditorium.

In addition to the provisions of rule R131-2-4, the following rules for the State Office Building Auditorium shall be observed:

(1) The Auditorium is available to all state departments and agencies on a first-come, first-served basis for meetings, public hearings, bid openings, lectures, training sessions, examinations and other similar activities. Agencies shall reserve the auditorium with the Executive Director.

(2) When not being used by a state agency, the Auditorium may be used by private or public organizations upon receipt of a permit from the Board or the Executive Director.

(a) The facility is available five days a week, Monday through Friday.

(3) After hours access shall be through the first floor south doors.

(a) The remainder of the building will be closed to the public.

(4) The Auditorium has an established Fire Marshal occupancy limit of 225 people which shall not be exceeded.

(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot on the west side of the State Office Building.

(6) The user agency/entity shall be responsible to arrange for sufficient supervision to be present to insure that people use only the Auditorium or rest room areas on the 1st floor of the State Office Building.

R131-2-7. Use of Capitol Hill Facilities and Grounds.

In addition to the provisions of rule R131-2-4, the following rules for the Capitol Hill Facilities and Grounds shall be observed:

(1) Camping is prohibited on the Capitol Hill Facilities and Grounds.

(2) When a permit is issued, the location of the activity will be specified. Participants will be required to contain the activity in the area specified in the permit.

(3) No activity on the grounds shall interfere with normal government or other facility use activities.

(4) No motor vehicle races, neither speed, time, endurance, exhibition nor driving competition shall be held on the Capitol Hill Facilities and Grounds.

(5) No grass, plants, shrubs, trees, paving or concrete shall be disturbed, broken, removed or covered without the written permission of Board or the Executive Director.

(6) The user agency/entity shall be responsible to arrange for sufficient supervision to be present to insure that people use only designated area and to insure that no damage occurs.

R131-2-8. Solicitation Policy.

(1) Definitions

(a) "Solicitation" means any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, sale or transfer of products, or services, or for the participation in a commercial venture of any kind.

(i) The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in paragraph 1 is construed as solicitation.

(2) Policy

(a) Solicitation, whether on-site or through establishment of an on-going delivery service, is prohibited on Capitol Hill Facilities and Grounds, except as listed in (c) below.

(b) No solicitation materials may be posted except on designated bulletin boards.

(c) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state-connected business or state-sponsored charitable purposes.

(d) Any and all violations observed shall be reported immediately to Protective Services.

(3) Permissible Solicitation Activities: The following kinds of solicitation activities may be allowed access to Capitol Hill Facilities:

(a) Charitable campaigns (including blood drives, state United Way campaign, food banks, sub for Santa and other charitable activities).

(b) Organized employee participation in sports activities representing their state agency or a charitable organization including departmental or charity competitive teams.

(c) Announcements required by law or requested by a state agency in furtherance of official duties (including job announcements, EEO and OSHA notices).

(d) Activities conducted at the direction of the head of a state agency.

(e) Employees' sale of small craft items during breaks and lunch in employee lounges and break areas.

(f) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This exemption does not apply to conducting a business (such as Tupperware or Amway sales).

(g) Employee recognition events conducted by a state agency such as National Secretaries Week Luncheons which are approved by the supervisor of the employees affected.

R131-2-9. Waiver.

Notwithstanding any requirement of these Capitol Hill Facility Use Rules, a waiver may be requested in writing by the applicant as to it's necessity. The Capitol Preservation Board may disapprove the waiver request. If so, the Board shall issue a written statement that the strict holding of the required provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish, in a clear and concise statement, that the waiver should be granted. The request for waiver shall be included as part of the Facility Use Application and must provide the necessary information and documentation to support such waiver. The decision of the Facilities Management group may be appealed to the Board, in a way similar to the appeal of the denial of a Facility Use Application.

KEY: public buildings, facilities use
March 13, 2000 63C-9-101 et seq.
Notice of Continuation February 16, 2005

R131. Capitol Preservation Board (State), Administration.
R131-7. State Capitol Preservation Board Master Planning Policy.
R131-7-1. Purpose.

Pursuant to Section 63C-9-402, this rule provides a procedure for the Executive Director to devise and develop a master-planning process for Capitol Hill Facilities; for future capital facilities expansion of the state Capitol grounds, and for projected Capitol Hill facility growth needs.

R131-7-2. Authority.

This rule is authorized under Subsection 63C-9-402(1), which directs the Executive Director to develop, for board approval, a master plan for the state capitol facilities and grounds.

R131-7-3. Policy.

The Executive Director shall prepare annually, and maintain in current form, a 20-year Master Plan and a corresponding annual budget for all existing and planned capital facilities for the Capitol Hill facilities and grounds, which shall reflect maintenance, preservation, restoration, and modification considerations.

R131-7-4. Review of Plan.

The Board will review the State Capitol Preservation Master Plan and associated budgetary requirements at least once yearly, or whenever it considers requests for project funding. The Board, when requested, may also review any design or project, to assist the Executive Director in long-term planning efforts. The Master Plan shall be expected to reflect realistic budgetary perspectives, usage, deterioration, and expectation of future growth that affects projected needs of state Capitol Hill facilities and grounds.

R131-7-5. Coordination with State Budget Policy.

Following approval by the Board, the Executive Director will submit a summary of the Master Plan and annual budget to the Governor's Office of Planning and Budget, for inclusion into the Executive Branch budget, pursuant to Section 63-38-1, et seq., for submission to the Legislature.

KEY: planning-budgeting, state buildings, public buildings
March 13, 2000 63C-9-101
Notice of Continuation February 16, 2005

R151. Commerce, Administration.
R151-1. Department of Commerce General Provisions.
R151-1-1. Oaths to Investigators and to Members of Boards and Commissions.

Each investigator employed by the Department of Commerce, and each board member and commission member working in conjunction with the Department or its Divisions, shall take the oath of office required by the Utah Constitution, Art. IV, Sec. 10. The oath of office may be administered by the following personnel within the Department: Department Executive Director and Deputy Director, Division Directors, Administrative Law Judges, Commerce Managers II, Division Assistant Directors, and Division Bureau Managers.

KEY: oath, board members, investigators
February 15, 2005 **Art. IV, Sec. 10**
53-13-101(12)
13-1-6(1)
13-1-2(1)(b)

R151. Commerce, Administration.
R151-46b. Department of Commerce Administrative Procedures Act Rules.
R151-46b-1. Title.

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

R151-46b-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

R151-46b-3. Authority - Purpose.

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

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

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

R151-46b-5. General Provisions.

(1) Liberal Construction.

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

(2) Deviation from Rules.

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

(3) Utah Rules of Civil Procedure.

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

(4) Computation of Time.

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

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

(5) Extension of Time; Continuance of Hearing.

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

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

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

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

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

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

(6) Conflict.

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

(7) Necessity of Compliance with GRAMA.

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

R151-46b-6. Representation of Parties.

(a) A party may be represented by counsel or may represent oneself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

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

R151-46b-7. Pleadings.

(1) Docket Number and Title.

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

TABLE I

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

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

(2) Content and Size of Pleadings.

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

(3) Signing of Pleadings.

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

(4) Amendments to Pleadings.

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

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

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

(b) Informal Adjudicative Proceedings.

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

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

(c) Time Period for Filing a Response.

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

(6) Motions.

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

(b) Time for Filing Motions to Dismiss.

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

(c) Memoranda and Affidavits.

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

(d) Oral Argument.

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

R151-46b-8. Filing and Service.

(1) Filing.

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

(2) Service.

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

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

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

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

TABLE II

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

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

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

(Signature)
(Title)
```

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

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

(1) Scope of discovery.

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

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

(c) Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Subsection R151-

46b-9(1)(a) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Subsection R151-46b-9(3)(a).

(2) Disclosures Required By Initial Prehearing Order.

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

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

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

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

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

(3) Disclosures Otherwise Required.

(a) Expert Testimony.

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

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

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

(b) Prehearing Disclosures.

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

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

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

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

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

(c) Form of Disclosures.

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

(4) Other Discovery Methods.

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

(5) Limits on Use of Discovery.

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

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

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

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

(6) Protective Orders.

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

(a) that the discovery not be had;

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

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

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

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

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

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

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

If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are

just, order that any party or person provide or permit discovery.

(7) Timing, Completion and Sequence of Discovery.

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

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

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

(8) Supplemented Disclosures and Amended Responses. A party who has made a disclosure under Subsections (2) or (3) or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include information thereafter acquired if ordered by the presiding officer or in the following circumstances:

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

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

(9) Initial Prehearing Conference.

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

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

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

(i) scheduling any additional prehearing conferences;

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

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

(iv) resolving any discovery issues;

(v) scheduling a tentative hearing date; and

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

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

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

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

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

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

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

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

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

(11) Filing of Discovery Requests or Disclosures.

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

(b) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy

of the request for discovery or the response which is at issue.

(12) Subpoenas.

(a) Every subpoena shall be issued by the presiding officer under the seal of the department or applicable division, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place therein specified. A subpoena may also command the person to whom it is directed to produce books, papers, or tangible things designated therein, and in the case of a subpoena for a deposition, to also permit inspection and copying of such items. A subpoena for a deposition must limit its designation of such items to matters which properly fall within the scope of discoverable information as provided in Subsection R151-46b-9(1)(a). The presiding officer shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Examination and cross-examination of witnesses may proceed as permitted at the hearing under the provisions of the Utah Administrative Procedures Act and the Utah Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness.

The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Subsection R151-46b-9(13)(b)(ii) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answer verbatim.

(d) Motion to Terminate or Limit Examination.

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

(e) Submission to Witness; Changes; Signing.

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

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

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

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

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

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

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

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

(h) Persons Before Whom Depositions May Be Taken.

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

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

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

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

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

(i) Use of Depositions in Agency Adjudicative Proceedings.

(a) Use of Depositions.

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

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

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

by an adverse party for any purpose.

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

(A) the witness is dead;

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

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

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

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

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

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

(b) Objections to Admissibility.

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

(c) Effect of Errors and Irregularities in Depositions.

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

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

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

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

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

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

(a) Scope.

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

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

(ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Subsection R151-46b-9(1)(a).

(b) Procedure.

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

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

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

(15) Physical and Mental Examination of Persons.

(a) Order for Examination.

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

(b) Report of Examining Physician.

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

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

him in respect of the same mental or physical condition.

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

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

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

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

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

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

(b) Discovery Sanctions.

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

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

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

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

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

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

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

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

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

R151-46b-10. Hearings.

(1) Hearings Required or Permitted.

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

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

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

(2) Time to Request Permissive Hearing.

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

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

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

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

(3) Scheduling of Hearings.

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

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

(4) Hearings Open to Public; Exceptions.

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

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

(5) Bifurcation of Hearing.

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

(6) Order of Presentation in Hearings.

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

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

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

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

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

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

(f) surrebuttal case by the opposing party;

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

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

(i) closing argument by the opposing party; and

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

(7) Testimony Under Oath.

All testimony presented at a hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath administered by the presiding officer.

(8) Telephonic Testimony.

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

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

(9) Standard of Proof.

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

(10) Burden of Proof.

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

(11) Default Procedures.

(a) Order entering the default of a party.

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

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

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

(b) Additional proceedings.

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

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

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

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

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

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

(12) Record of Hearing.

(a) Record Requirement.

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

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

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

(ii) Informal Adjudicative Proceedings.

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

(c) Record Expense.

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

(d) Transcription of Record.

(i) The record of a hearing is not required to be transcribed. However, a party may elect to have the record of a hearing transcribed by the reporter who reported the hearing or by a person approved by the presiding officer. A transcript of a hearing record shall contain the certification of the transcriber, stating that the transcript is a correct and accurate transcription of the hearing record. Pages and lines in a transcript shall be numbered for referencing purposes.

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

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

(13) Fees.

(a) Witness Fees.

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

(b) Interpreter and Translator Fees.

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

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

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

(d) Only One Fee Per Day Allowed.

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

R151-46b-11. Orders.

(1) Requirements.

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

(2) Effective Date.

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

(3) Clerical Mistakes.

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

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

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

(2) When Agency Review Is Not Available.

(a) Agency review is not available as to any order or decision entered by the following agencies:

(i) the Real Estate Appraiser Licensing and Certification Board;

(ii) the Utah Motor Vehicle Franchise Board;

(iii) the Utah Powersport Advisory Board; and

(iv) the Pete Suazo Utah Athletic Commission.

(b) Agency review is not available for any decisions or orders entered by the Division of Occupational and Professional Licensing as to the following matters:

(i) Prelitigation proceedings conducted pursuant to Title 78, Chapter 14, the Utah Health Care Malpractice Act;

(ii) Requests for modification to disciplinary orders issued by the Division of Occupational and Professional Licensing; and

(iii) Requests for entry into the Diversion Program pursuant to Section 58-1-404(4).

(c)(i) Agency reconsideration is available for orders or decisions exempt from agency review under Subsections (a) and (b)(ii), pursuant to R151-46b-13.

(ii) Agency reconsideration is not available for orders or decisions exempt from agency review under Subsections (b)(i) and (b)(iii), pursuant to Subsections 58-1-404(4) and 78-14-12(1)(c).

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

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

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

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

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

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve upon all other parties copies of correspondence, pleadings, and other submissions. If an attorney enters an appearance on behalf of a party, service shall thereafter be made upon that attorney, instead of directly to the party.

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

(4) Stay Pending Agency Review.

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

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

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

(5) Memoranda.

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

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

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

(6) Oral Argument.

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

(7) Standard of Review.

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

(8) Type of Relief.

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

(9) Order on Review.

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

R151-46b-13. Agency Reconsideration - When Agency Review Is Not Available.

(1) When agency review is not available, and agency reconsideration is provided for under Subsection R151-46b-12(2)(c)(i), the following requirements shall apply:

(a) Before seeking judicial review of any order or decision, an aggrieved party may file a petition for reconsideration by the relevant agency pursuant to Section 63-46b-13.

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

executive director of the Department.

(2) Stay Pending Reconsideration.

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

(3) Order on reconsideration.

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

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

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

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

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

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

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

(b) a statement of the facts relied upon;

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

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

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

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

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

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

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

R151-46b-16. Emergency Adjudicative Proceedings.

Unless otherwise provided by statute or rule:

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

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

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

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

R151-46b-17. Declaratory Orders.

(1) Filing of Petition for Declaratory Order.

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

(2) Disposition of Petition.

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

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

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

(3) Classes of Circumstances in Which the Agency Will Not Issue a Declaratory Order.

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

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

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

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

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

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

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

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

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

(4) Agency Review.

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

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

(1) Definition.

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

(2) Retention.

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

(3) Classification.

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

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R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rules.
R156-31b-101. Title.

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

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

(1) "Absolute discharge", as used in Subsection 58-31b-302(7)(b), means the completion of criminal probation or parole.

(2) "Activities of daily living (ADLs)" means those personal activities in which individuals normally engage or are required for an individual's well-being whether performed by them alone, by them with the help of others, or for them by others, including eating, dressing, mobilizing, toileting, bathing, and other acts or practices to which an individual is subjected while under care in a regulated facility or under the orders of a licensed health care practitioner in a private residence.

(3) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

(4) "APRN" means an advanced practice registered nurse.

(5) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601; and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2003-04 edition, published by the American Council on Education.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "Directory of Accredited Nursing Programs", 2003, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

(7) "CCNE" means the Commission on Collegiate Nursing Education.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "COA", as used in these rules, means the Council of Accreditation of Nurse Anesthesia Education Programs.

(10) "Clinical mentor/preceptor", as used in Section R156-31b-607, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

(11) "Comprehensive nursing assessment", as used in these rules, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient/client conditions as well as emergent changes in patient's/client's health status; recognizing alterations to previous patient/client conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's/client's condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(12) "Contact hour" means 50 minutes.

(13) "CRNA" means a certified registered nurse anesthetist.

(14) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(15) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.

(16) "Disruptive behavior", as used in these rules, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

(17) "Focused assessment", as used in these rules, means an appraisal of an individual's status and situation at hand, contributing to comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(18) "Generally recognized scope and standards of nursing practice", as referred to in Subsections 58-31b-102(17), (18), and (19), means the "Nursing:Scope and Standards of Practice", 2003, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(19) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(20) "LPN" means a licensed practical nurse.

(21) "NLNAC" means the National League for Nursing Accrediting Commission.

(22) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(23) "Non-approved education program" means any foreign nurse education program.

(24) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;
(b) certified nurse midwife;
(c) chiropractic physician;
(d) dentist;
(e) osteopathic physician;
(f) physician assistant;
(g) podiatric physician;
(h) optometrist;
(i) certified registered nurse anesthetist.

(25) "Parent-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

(26) "Patient surrogate", as used in Subsection R156-31b-502(4), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

(27) "Personal assistance and care", as used in Subsection 58-31b-102(11), means acts or practices by an individual to personally

assist or aid another individual in activities of daily living. These activities do not include those services provided by physical therapy, occupational therapy, or recreational therapy aides/assistants.

(28) "Postsecondary school", as used in Section R156-31b-607, means a program registered and in good standing with the Utah Department of Commerce, Division of Consumer Protection, that offers coursework to individuals who have graduated from high school or have been awarded a GED.

(29) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(3)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(30) "RN" means a registered nurse.

(31) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(32) "Supervisory clinical faculty", as used in Section R156-31b-607, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical mentors/preceptors who provide the actual direct clinical experience.

(33) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-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 31b.

R156-31b-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.

R156-31b-201. Board of Nursing - Membership.

In accordance with Subsection 58-31b-201(1), nurses serving as members of the Board shall be:

(1) six registered nurses, two of whom are actively involved in nursing education;

(2) one licensed practical nurse; and

(3) two advanced practice registered nurses or certified registered nurse anesthetists.

R156-31b-202. Advisory Peer Committee created - Membership - Duties.

(1) In accordance with Subsections 58-1-203(6) and 58-31b-202(2), there is created the Psychiatric Mental Health Nursing Peer Committee whose duties and responsibilities include reviewing APRN applications, when appropriate, and advising the board and division regarding practice issues.

(2) The composition of the committee shall be:

(a) three APRNs specializing in psychiatric mental health nursing;

(b) at least one member shall be a faculty member actively teaching in a psychiatric mental health nursing program; and

(c) at least one member shall be actively participating in the supervision of an APRN intern.

R156-31b-301. License Classifications - Professional Upgrade.

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-31b-302(1)(e) and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure as a LPN by equivalency shall submit written verification from an approved registered nurse education program, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs who are not currently licensed in another state shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools for an applicant who is applying for licensure as a registered nurse; or

(b) Foundation for International Services, Inc. for an applicant who is applying for licensure as a licensed practical nurse.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing in Psychiatric Mental Health Nursing.

(1) In accordance with Subsection 58-31b-302(3)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice (including mental health therapy).

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(b) The remaining 3,000 hours shall:

(i) include a minimum of 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental therapy services provided;

(ii) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(iii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3).

(c) At least 2,000 hours must be under the supervision of an APRN specializing in psychiatric mental health nursing. An APRN working in collaboration with a licensed mental health therapist may delegate selected clinical experiences to be supervised by that mental health therapist with general supervision by the APRN.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing in psychiatric mental health nursing under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(3)(g) by demonstrating that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

(H) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(I) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(J) Psychiatric and Mental Health Nurse Practitioner (Adult and Family);

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the Oncology Nursing Certification Corporation Advanced Oncology Certified Nurse if taken on or before July 1, 2005;

(vi) the Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care; or

(vii) the Advanced Critical Care Examination administered by the American Association of Critical Care Nurses.

(d) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.

R156-31b-302d. Qualifications for Licensure - Criminal Background Checks.

(1) In accordance with Subsection 58-31b-302(7), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:

(a) a visa issued within six months of making application to Utah; or

(b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application to Utah.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

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

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) A LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; or

(ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.

(c) A CRNA shall be currently certified or recertified as a CRNA.

R156-31b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the division may issue a temporary license to a person who meets all qualifications for licensure as either an LPN or RN, except for the passing of the required examination, if the applicant:

(a) is a graduate of a Utah-based, approved nursing education program within two months immediately preceding application for licensure;

(b) has never before taken the specific licensure examination;

(c) submits to the division evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a fully licensed registered nurse.

(2) The temporary license issued under Subsection (1) expires the earlier of:

(a) the date upon which the division receives notice from the examination agency that the individual failed the examination;

(b) four months from the date of issuance; or

(c) the date upon which the division issues the individual full licensure.

R156-31b-306. Inactive Licensure.

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

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a RN or LPN license which has been inactive for more than five years but less than 10 years, the licensee must document active licensure in another state or jurisdiction, pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license, or successfully complete an approved re-entry program.

(4) To reactivate a RN or LPN license which has been inactive for 10 or more years, the licensee must document active licensure in another state or jurisdiction, or pass the required examinations as defined in Section R156-31b-302 within six months prior to making application to reactivate a license and successfully complete an approved re-entry program.

(5) To reactivate an APRN or CRNA license which has been inactive for more than five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

(1) In accordance with Section 58-1-308 and Subsection R156-1-308e(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

R156-31b-308. Exemption from Licensure.

In accordance with Subsections 58-1-307(1) and 58-31b-308(1)(a), an individual who provides up to 48 consecutive hours of respite care for a family member, with or without compensation, is exempt from licensure.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire:

(a) immediately upon failing to take the first available examination;

(b) 30 days after notification, if the applicant fails the first available examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-310. Licensure by Endorsement.

(1) In accordance with Section 58-1-302, an individual who moves from a Nurse Licensure Compact party state does not need to hold a current license, but the former home state license must have been in good standing at the time of expiration.

(2) An individual under Subsection (1) who has not been licensed or practicing nursing for three years or more is required to retake the licensure examination to demonstrate good standing within the profession.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse or health care assistant whose license or registration is suspended under Subsection 58-31b-401(2)(d) may petition the division at any time that he can demonstrate that he can resume competent practice.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Using a protected title:
initial offense: $100 - $300
subsequent offense(s): $250 - $500

(2) Using any title that would cause a reasonable person to believe the user is licensed or registered under this chapter:
initial offense: $50 - $250
subsequent offense(s): $200 - $500

(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: $1,000 - $3,000
subsequent offense(s): $5,000 - $10,000

(4) Practicing or attempting to practice nursing or health care assisting without a license or registration or with a restricted license or registration:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

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

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

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

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

(9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing or health care assisting:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

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

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

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

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

(14) Practicing or attempting to practice as a nurse or health care assistant when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(15) Practicing or attempting to practice as a nurse or health care assistant through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(16) Practicing or attempting to practice as a nurse or health care assistant by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(17) Practicing or attempting to practice as a nurse or health care assistant beyond the individual's scope of competency, abilities, or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(18) Practicing or attempting to practice as a nurse or health care assistant beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's or registrant's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(20) Failure to safeguard a patient's right to privacy:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(22) Engaging in sexual relations with a patient:
initial offense: $5,000 - $10,000
subsequent offense(s): $10,000

(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000

(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(27) Unlawful or inappropriate delegation of nursing care:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(28) Failure to exercise appropriate supervision:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(30) Failure to file or impeding the filing of required reports:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(31) Breach of confidentiality:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(32) Failure to pay a penalty:
Double the original penalty amount up to $10,000
(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(34) Failure to confine practice within the limits of competency:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(35) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(36) Engaging in a sexual relationship with a patient surrogate:
initial offense: $1,000 - $5,000
subsequent offense(s): $5,000 - $10,000
(37) Engaging in practice in a disruptive manner:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000.

R156-31b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(2) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17a-620, or as may be otherwise provided by law;

(3) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(a) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(b) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(c) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;

(4) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(a) did not result in any form of abuse or exploitation of the surrogate or patient; and

(b) did not adversely alter or affect in any way:

(i) the nurse's professional judgment in treating the patient;

(ii) the nature of the nurse's relationship with the surrogate; or

(iii) the nurse/patient relationship;

(5) engaging in disruptive behavior in the practice of nursing;

(6) unauthorized disclosure of confidential information obtained as a result of practice as a health care assistant; and

(7) engaging in any regulated health care practice for which the person is not registered, certified, or licensed.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter are set forth in Sections R156-31b-601, 602, 603, and 604.

(1) Standards for programs located within Utah leading to licensure as a registered nurse, advanced practice registered nurse, or certified registered nurse anesthetist:

(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education, or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES), the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT), or the Accrediting Commission of the Distance Education and Training Council (DETC);

(b) admit as students, only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(c) be legally authorized by the State of Utah to provide a program of education beyond secondary education;

(d) provide not less than a two academic year program of study that awards a minimum of an associate degree that is transferable to another institution of higher education;

(e) provide an academic program of study that awards a minimum of a master's degree that is transferable to another institution of higher education if providing education toward licensure as an advanced practice registered nurse;

(f) meet the accreditation standards of either CCNE, NLNAC, or COA as evidenced by accreditation by either organization as required under Subsection R156-31b-602; and

(g) have at least 20 percent of the school's revenue from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(2) Standards for programs located within Utah leading to licensure as a licensed practical nurse:

(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education; or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES) or the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT);

(b) admit as nursing students, only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(c) be legally authorized by the State of Utah to provide a program of education beyond secondary education;

(d) provide not less than one academic year program of study that leads to a certificate or recognized educational credential and provides courses that are transferable to an institution of higher education;

(e) meet the accreditation standards of either CCNE or NLNAC as evidenced by accreditation by either organization as required under Subsection R156-31b-602.

(f) have at least 20 percent of the school's revenue from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(3) Programs located outside of Utah leading toward licensure as a nurse must be:

(a) accredited by the CCNE, NLNAC or COA; and

(b) approved by the Board of Nursing or duly recognized agency in the state in which the program is offered.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of these rules and are not accredited, must become accredited by December 31, 2005, or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for provisional approval as required in this section; and

(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) The general standards for provisional approval include:

(a) the purpose and outcomes of the nursing program shall be consistent with the Nurse Practice Act and Rules and other relevant state statutes;

(b) the purpose and outcomes of the nursing program shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;

(c) the input of consumers shall be considered in developing and evaluating the purpose and outcomes of the program;

(d) the nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(e) the curriculum shall provide diverse didactic and clinical learning experiences consistent with program outcomes;

(f) faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;

(g) the nursing program administrator shall be a professionally and academically qualified registered nurse with institutional authority and administrative responsibility for the program;

(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(i) the fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;

(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;

(k) the program must meet the criteria for nursing education programs established in Section R156-31b-601; and

(l) the nursing education program shall be an integral part of a governing academic institution accredited by an accrediting body that is recognized by the U.S. Secretary of Education.

(3) Programs which have been granted provisional approval status shall submit an annual report to the Division on the form prescribed by the Division.

(4) Programs which have been granted provisional approval prior to the effective date of these rules and are not accredited, must become accredited by December 31, 2005.

(5) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:

(a) students' achievement of program outcomes;

(b) evidence of adequate program resources including fiscal, physical, human clinical and technical learning resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;

(c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;

(d) evidence that accurate program information for consumers is readily available;

(e) the head of the academic institution and the administration support meet program outcomes;

(f) the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and

(g) evidence that the academic institution assures security of student information.

(6) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:

(a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;

(b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;

(c) learning experiences and methods of instruction, including distance education methods are consistent with the written curriculum plan;

(d) coursework including, but not limited to:

(i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(ii) didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in clients across the life span and in a variety of clinical settings, to include:

(A) using informatics to communicate, manage knowledge, mitigate error and support decision making;

(B) employing evidence-based practice to integrate best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing care;

(C) providing client-centered, culturally competent care:

(1) respecting client differences, values, preferences and expressed needs;

(2) involving clients in decision-making and care management;

(3) coordinating and managing continuous client care; and

(4) promoting healthy lifestyles for clients and populations;

(D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate client care and health promotion; and

(E) participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in processes of client care; and

(e) supervised clinical practice which include development of skill in making clinical judgments, management and care of groups of clients, and delegation to and supervision of other health care providers;

(i) clinical experience shall be comprised of sufficient hours to meet these standards, shall be supervised by qualified faculty and ensure students' ability to practice at an entry level;

(ii) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the division; and

(iii) all student clinical experiences, including those with preceptors, shall be directed by nursing faculty.

(7) Students rights and responsibilities:

(a) students shall be provided the opportunity to acquire and

demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight;

(b) all policies relevant to applicants and students shall be available in writing;

(c) students shall be required to meet the health standards and criminal background checks as required in Utah;

(d) students shall receive faculty instruction, advisement and oversight; and

(e) students shall maintain the integrity of their work.

(8) The qualifications for the administrator of a nursing education program shall include:

(a) the qualifications for an administrator in a program preparing an individual for licensure as an LPN shall include:

(i) a current, active, unencumbered RN license or multistate privilege to practice nursing in Utah;

(ii) a minimum of a masters degree in nursing or a nursing doctorate;

(iii) educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of nursing practice at the practical nurse level;

(b) the qualifications for an administrator in a program preparing an individual for licensure as an RN shall include:

(i) a current, active unencumbered RN license or multistate privilege to practice nursing in Utah;

(ii)(A) associate degree program: a minimum of a masters degree in nursing or a nursing doctorate;

(B) baccalaureate degree program: a minimum of a masters degree in nursing and an earned doctorate or a nursing doctorate;

(iii) education preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of RN practice;

(c) the qualifications for an administrator/director in a graduate program preparing an individual for licensure as an APRN shall include:

(i) a current, active unencumbered APRN license or multistate privilege to practice as an APRN in Utah;

(ii) a minimum of a masters in nursing or a nursing doctorate in an APRN specialty;

(iii) educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of APRN practice.

(9) The qualifications for faculty in a nursing education program shall include:

(a) a sufficient number of qualified faculty to meet the objectives and purposes of the nursing education program;

(b) the nursing faculty shall hold a current, active, unencumbered RN license or multistate privilege, or APRN license or multistate privilege to practice in Utah; and

(c) clinical faculty shall hold a license or privilege to practice and meet requirements in the state of the student's clinical site.

(10) The qualifications for nursing faculty who teach in a program leading to licensure as a practical nurse include:

(a) a minimum of a baccalaureate degree with a major in nursing;

(b) two years of clinical experience; and

(c) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(11) The qualifications for nursing faculty who teach in a program leading to licensure as a RN include:

(a) a minimum of a masters degree with a major in nursing or a nursing doctorate degree;

(b) two years of clinical experience; and

(c) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(12) The qualifications for nursing faculty who teach in a program leading to licensure as an APRN include:

(a) a minimum of a masters degree with a major in nursing or a nursing doctorate degree;

(b) holding a license or multistate privilege to practice as an APRN;

(c) two years of clinical experience practicing as an APRN; and

(d) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(13) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching.

(14) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(15) Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received clinical and didactic instruction in all basic areas for that course or specific learning experience. Clinical preceptors should be licensed as a nurse at or above the level for which the student is preparing.

(16) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) Each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) The curriculum shall be consistent with nationally recognized APRN roles and specialties and shall include:

(i) graduate nursing program core courses;

(ii) advanced practice nursing core courses including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(iii) coursework focusing on the APRN role and specialty.

(c) Dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties.

(d) Instructional track/major shall have a minimum of 500 hours of supervised clinical. The supervised experience shall be directly related to the knowledge and role of the specialty and category. Specialty tracks that provide care to multiple age groups and care settings will require additional hours distributed in a way that represents the populations served.

(e) There shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty. Post-masters nursing students shall complete the requirements of the masters APRN program through a formal graduate level certificate or master level track in the desired role and specialty. A program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area. Post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours.

(f) A lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or possessing a APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

R156-31b-604. Nursing Education Program Probationary Approval.

(1) The division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for provisional or full approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(2) The division may place on probationary approval status a program which implements an outreach program or satellite program without prior notification to the Division.

(3) Programs which have been granted probationary approval status shall submit an annual report to the division on the form prescribed by the division.

R156-31b-605. Nursing Education Program Notification of Change.

(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the division for approval at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct an annual survey of nursing education programs to monitor compliance with these rules. The survey may include the following:

(1) a copy of the program's annual report to a nurse accrediting body;

(2) a copy of any changes submitted to any nurse accrediting body; and

(3) a copy of any accreditation self study summary report.

R156-31b-607. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program which is located outside the state must meet to allow students to obtain clinical experiences in Utah are set forth as follows.

(1) An entry level distance learning nursing education program which leads to licensure utilizing precepted clinical experiences in Utah must meet the following criteria:

(a) parent-program must be Board of Nursing approved in the state of primary location (business), be nationally accredited by either NLNAC, CCNE, or COA, and must be affiliated with an institution of higher education;

(b) parent-program clinical faculty supervisor must be licensed in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed in good standing, in Utah or a Compact State;

(d) parent-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(e) parent-program must document compliance with the above stated criteria, along with a request to be approved to have a student who is exempt from licensure under Subsection 58-1-307(c).

(2) A nursing education program located in another state that desires to use Utah health care facilities for clinical experiences for one or more students must meet the following criteria:

(a) be approved by the home state Board of Nursing, be nationally accredited by either NLNAC or CCNE, and must be affiliated with an institution of higher education;

(b) clinical faculty must be employed by the nursing education program, meet the requirements to be a faculty member as established by the accrediting body and the program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed, in good standing, in Utah or a Compact state;

(d) have a contract with the Utah health care facilities that provide the clinical sites;

(e) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing; and

(f) document compliance with the above stated criteria, along with a request to be approved to have a student(s) who is exempt from licensure under Subsection 58-1-307(c) of the Utah Code.

(3) A distance learning didactic nursing education program with a Utah based proprietary post-secondary school which provides tutoring services, facilitates clinical site selection, and provides clinical site faculty must meet the following criteria:

(a) parent-program must be approved by the Board of Nursing in the state of primary location (business), be nationally accredited by either NLNAC or CCNE, and must be affiliated with an institution of higher education;

(b) a formal contract must be in place between the parent-program and the Utah post-secondary school;

(c) parent-program and Utah post-secondary school must submit an application for program approval by the Division of Occupational and Professional Licensing in collaboration with the Board of Nursing in Utah, utilizing the parent-program's existing curriculum. Approval is granted to the parent-program, not to the post-secondary school;

(d) clinical faculty (mentors) must be employed by the parent-program (this can be as a contractual faculty member), meet the requirements to be a faculty member as established by the accrediting body and the parent-program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(e) clinical faculty supervisor(s) located at the parent-program must be licensed, in Utah or a Compact state;

(f) parent-program is responsible for conducting the nursing education program, the program's policies and procedures, and the selection of the students;

(g) parent-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(h) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(10)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the

delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as either an APRN or a CRNA may practice within the scope of practice of a RN under his APRN or CRNA license.

(4) An individual licensed in good standing in Utah as either an APRN or a CRNA and residing in this state, may practice as an RN in any Compact state.

R156-31b-703. Generally Recognized Scope of Practice of a LPN.

In accordance with Subsection 58-31b-102(17), the LPN practicing within the generally recognized scope of practice of a LPN practices as follows:

(1) As related to professional accountability:

(a) practices within the legal boundaries for practical nursing through the scope of practice authorized in statute and rule;

(b) demonstrates honesty and integrity in nursing practice;

(c) bases nursing decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accepts responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintains continued competence through ongoing learning and application of knowledge in the client's interest.

(2) Responsibilities for nursing practice implementation:

(a) conducts a focused nursing assessment;

(b) plans for episodic nursing care;

(c) demonstrates attentiveness and provides patient/client surveillance and monitoring;

(d) assists in identification of client needs;

(e) seeks clarification of orders when needed;

(f) demonstrates attentiveness and provides observation for signs, symptoms and changes in client condition;

(g) assists in the evaluation of the impact of nursing care, and contributes to the evaluation of patient/client care;

(h) recognizes client characteristics that may affect the patient's/client's health status;

(i) obtains orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implements appropriate aspects of client care in a timely manner;

(i) provides assigned and delegated aspects of patient's/client's health care plan;

(ii) implements treatments and procedures; and

(iii) administers medications accurately;

(k) documents care provided;

(l) communicates relevant and timely client information with other health team members including:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies;

(iii) significant changes in patient/client condition; or

(iv) patient/client needs;

(m) participates in nursing management;

(i) assigns nursing activities to other LPNs;

(ii) delegates nursing activities for stable patients/clients to unlicensed assistive personnel;

(iii) observes nursing measures and provides feedback to nursing manager; and

(iv) observes and communicates outcomes of delegated and assigned activities;

(n) takes preventive measures to protect patient/client, others and self;

(o) respects patient's/client's rights, concerns, decisions and dignity;

(p) promotes safe client environment;

(q) maintains appropriate professional boundaries; and

(r) assumes responsibility for own decisions and actions.

(3) Responsibilities as a member of an interdisciplinary health care team:

(a) functions as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respects client property and the property of others; and

(c) protects confidential information unless obligated by law to disclose the information.

R156-31b-704. Generally Recognized Scope of Practice of a RN.

In accordance with Subsection 58-31b-102(18), the RN practices within the generally recognized scope of practice of a RN practices as follows:

(1) As related to professional accountability:

(a) practices within the legal boundaries for nursing through the scope of practice authorized in statute and rules;

(b) demonstrates honesty and integrity in nursing practice;

(c) bases professional decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accepts responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintains continued competence through ongoing learning and application of knowledge in the patient's/client's interest.

(2) Responsibility for nursing practice implementation:

(a) conducts a comprehensive nursing assessment;

(b) detects faulty or missing patient/client information;

(c) applies nursing knowledge effectively in the synthesis of the biological, psychological and social aspects of the patient's/client's condition;

(d) uses this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's/client's overall health care plan;

(e) provides appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seeks clarification of orders when needed;

(g) implements treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtains orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrates attentiveness and provides client surveillance and monitoring;

(j) identifies changes in patient's/client's health status and comprehends clinical implications of patient/client signs, symptoms and changes as part of expected and unexpected patient/client course or emergent situations;

(k) evaluates the impact of nursing care, the patient's/client's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;

(l) documents nursing care;

(m) intervenes on behalf of patient/client when problems are identified and revises care plan as needed;

(n) recognizes patient/client characteristics that may affect the patient's/client's health status; and

(o) takes preventive measures to protect patient/client, others and self.

(3) Responsibility to act as an advocate for patient/client:

(a) respects the patient's/client's rights, concerns, decisions and dignity;

(b) identifies patient/client needs;

(c) attends to patient/client concerns or requests;

(d) promotes safe patient/client environment;

(e) communicates patient/client choices, concerns and special needs with other health team members regarding:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies; and

(iii) significant changes in patient/client condition;

(f) maintains appropriate professional boundaries;

(g) maintains patient/client confidentiality; and

(h) assumes responsibility for own decisions and actions.

(4) Responsibility to organize, manage and supervise the practice of nursing:

(a) assigns to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;

(b) delegates to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;

(c) matches patient/client needs with personnel qualifications, available resources and appropriate supervision;

(d) communicates directions and expectations for completion of the delegated activity;

(e) supervises others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;

(f) provides follow-up on problems and intervenes when needed;

(g) evaluates the effectiveness of the delegation or assignment;

(h) intervenes when problems are identified and revises plan of care as needed;

(i) retains professional accountability for nursing care as provided;

(j) promotes a safe and therapeutic environment by:

(i) providing appropriate monitoring and surveillance of the care environment;

(ii) identifying unsafe care situations; and

(iii) correcting problems or referring problems to appropriate management level when needed; and

(k) teaches and counsels patient/client families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.

(5) Responsibility as a member of an interdisciplinary health care team:

(a) functions as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient/client-centered health care plan;

(b) respects patient/client property, and the property of others; and

(c) protects confidential information.

(6) As chief administrative nurse:

(a) assures that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;

(b) assures that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;

(c) assures that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and

(d) assures that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.

(7) When functioning in a nursing program educator (faculty) role:

(a) teaches current theory, principles of nursing practice and nursing management;

(b) provides content and clinical experiences for students consistent with statutes and rules;

(c) supervises students in the provision of nursing services; and

(d) evaluates student scholastic and clinical performance with expected program outcomes.

KEY: licensing, nurses

February 17, 2005	**58-31b-101**
Notice of Continuation June 2, 2003	**58-1-106(1)(a)**
	58-1-202(1)(a)

R164. Commerce, Securities.
R164-2. Investment Adviser - Unlawful Acts.
R164-2-1. Investment Adviser Performance-Based Compensation Contracts.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets the requirements whereby an investment adviser may receive performance-based compensation for investment advisory services rendered.

(B) Definitions

(1) "Affiliate" has the same definition as in Section 2(a)(3) of the Investment Company Act of 1940, which is adopted and incorporated by reference and available from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(3)(a) a company required to be registered under the Investment Company Act of 1940, but which is not so registered;

(3)(b) a private investment company, for purposes of this subparagraph a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(3)(c) an investment company registered under the Investment Company Act of 1940; or

(3)(d) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, which is adopted and incorporated by reference and available from the Division, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of subparagraph (B)(4) of this rule.

(4) "Interested person" means:

(4)(a) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(4)(b) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(4)(b)(i) 1/10 of 1% of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser, or

(4)(b)(ii) 5% of the total assets of the person seeking to act as the client's independent agent; or,

(4)(c) any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Performance-based contract exemption

(1) Notwithstanding Subsection 61-1-2(2), an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs (D) through (I) of this rule are met.

(D) Client requirements

(1) The client entering into the contract must be:

(1)(a) a natural person or a company who, immediately after entering into the contract, has at least $750,000 under the management of the investment adviser;

(1)(b) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse;

(1)(c) a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(1)(d) a natural person who immediately prior to entering into the contract is:

(1)(d)(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or

(1)(d)(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participated in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(E) Compensation formula

(1) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1)(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1) (1999) which is adopted and incorporated by reference and available from the Division, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(1)(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 the formula must include:

(1)(b)(i) the realized capital losses of securities over the period, and

(1)(b)(ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and,

(1)(c) the formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses, computed in accordance with subparagraphs (a) and (b) of this subparagraph (E), in the client's account for a period of not less than one year.

(F) Additional disclosure requirements

(1) Before entering into the advisory contract and in addition to the requirements of SEC Form ADV - Uniform Application for Investment Adviser Registration, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(1)(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(1)(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(1)(c) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(1)(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and,

(1)(e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 how the securities will be valued and the extent to which the valuation will

be independently determined.

(G) Arms length agreement

(1) The investment adviser, and any investment adviser representative, who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subparagraph (B)(3) of this rule, the person representing the company, understands the proposed method of compensation and its risks.

(2) The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

(H) Unlawful acts

(1) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Subsection 61-1-2(1) or any other applicable provision of the Utah Uniform Securities Act or any rule or order thereunder.

KEY: securities, securities regulation
March 20, 2000 61-1-2
Notice of Continuation February 28, 2005 61-1-24

R277. Education, Administration.
R277-422. State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs.
R277-422-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Voted leeway program" or "state-supported voted leeway program" means a state-supported program in which a property tax levy approved under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

C. "Local board leeway program" or "local board-approved leeway program" means a state-supported program in which a local board authorizes a property tax levy under Section 53A-17a-134 to cover a portion of the costs within the school district general fund of the state-supported minimum school program. The levy may require voter approval under Section 53A-17a-134(4). These funds shall be spent for class size reduction or other purposes in a district if the local board determines that the average class size in the school district is not excessive.

D. "Local board" means the school board members elected to govern a school district.

E. "Local board leeway for reading improvement" means a local board leeway program in which a local board authorizes a property tax levy under Section 53A-17a-151 to cover a portion of the costs of a school district K-3 Reading Improvement Program established in Section 53A-17a-150.

F. "State-supported" means a formula-based state contribution of money to the voted leeway program and the board-approved leeway program as defined in Section 53A-17a-133(3) and Section 53A-17a-134(2).

R277-422-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(f) which directs the Board to establish rules for the minimum school program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify requirements, timelines, and clarifications for the state-supported voted, local board-approved, and local board leeway for reading improvement programs.

R277-422-3. Requirements and Timelines for State-Supported Voted Leeway.

A. A local board may establish a state-supported voted leeway program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted leeway equal to or less than the levy authorized by the election.

C. An election to consider adoption or modification of a state-approved voted leeway program is required.

D. A local board may continue an existing state-supported voted leeway program despite a majority vote opposing a modification of the state-supported voted leeway program.

E. If adoption of a voted leeway program is contingent upon an offset reduction of other local board tax levies, the local board shall allow the electors, in a election, to reconsider modifying or discontinuing the voted leeway program prior to a subsequent increase in the certified tax rate as set by the local board.

F. The state provides state guarantee funds to support the district state-supported voted leeway according to the amount specified in Section 53A-17a-133(3) and the local board-approved leeway according to the amount specified in Section 53A-17a-134(2).

G. State and local funds received by a local board under the state-supported voted leeway program are unrestricted revenue and may be budgeted and expended within the school district's general fund as authorized by the local board.

H. In order to receive state support for an initial or subsequent increase in a voted leeway tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial or additional voted leeway tax rate.

I. If a school district qualifies for state support the year prior to an increase in its existing voted leeway tax levy; and:

(1) receives voter approval for an increase after December 1, and

(2) intends to levy the additional rate for the fiscal year starting the following July 1, then

(3) the district shall only receive state support for the existing voted leeway tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. Local Board-Approved Leeway Requirements and Timelines.

In order to receive state support for an initial or subsequent increase in a board-approved leeway tax rate, a local board shall approve the tax rate no later than April 1 prior to the commencement of the fiscal year of implementation of that initial or additional board leeway tax rate.

R277-422-5. Optional Reading Improvement Levy Requirements and Timelines.

A. Local funds received by a local board under the local board leeway for reading improvement tax levy shall be used for funding the school district's K-3 Reading Improvement Program.

(1) This levy is in addition to any other tax levy or maximum tax rate; and

(2) does not require voter approval; and

(3) may be modified or terminated by a majority vote of the local board.

(4) The local board leeway for reading improvement is not a state-supported levy.

B. A local board shall establish its optional board leeway for reading improvement levy by June 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year.

C. If after 36 months of K-3 Reading Improvement Program operation, a school district fails to meet the goals stated in the district's plan for student reading proficiency improvement, as measured by gain scores, the local board shall at the next possible tax rate setting opportunity terminate its board leeway for reading improvement tax levy.

D. School districts that fail to reach their reading goals shall terminate their levy under Section 53A-17a-150(15). After a period of no less than one year, school districts that terminated their levy may present a new or revised K-3 Reading Initiative plan to the Board. Following approval by the Board, the local board may reinstate the levy at the next possible tax rate setting opportunity.

R277-422-6. Tax Rate Setting Schedule.

Districts shall submit all approved tax levies to county auditors before the second Tuesday in August.

KEY: education, finance

July 16, 2004	**Art X Sec 3**
Notice of Continuation October 18, 2002	**53A-1-402(1)(f)**
	53A-1-401(3)
	53A-17a-133
	53A-17a-134
	53A-17a-150
	53A-17a-151

R277. Education, Administration.
R277-501. Educator Licensing Renewal, Highly Qualified and Timelines.
R277-501-1. Definitions.

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

C. "Active educator" means an individual holding a valid license issued by the Board who is employed by a unit of the public education system or an accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle.

D. "Active educator license" means a license that is currently valid for service in a position requiring a license.

E. "Approved Inservice" means training or courses, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

F. "Board" means the Utah State Board of Education.

G. "College/university course" means a course taken through an institution approved under Section 53A-6-108. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals.

H. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

I. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved inservice, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, and certificates shall be maintained by the educator;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

J. "Educational research" means conducting educational research or investigating education innovations.

K. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

L. "HOUSSE" means high, objective, uniform state standard of evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

M. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a unit of the public education system or an accredited private school in a role covered by the license for less than three years in the individual's renewal period.

N. "Inactive educator license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

O. "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.

P. "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.

Q. "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.

R. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

S. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification. NASDTEC maintains an Educator Information Clearinghouse for its members regarding persons whose licenses have been suspended or revoked.

T. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

U. "Professional development plan" means a document prepared by the educator consistent with this rule.

V. "Professional development points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

W. "USOE" means the Utah State Office of Education.

X. "Verification of employment" means official documentation of employment as an educator.

R277-501-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

R277-501-3. Categories of Acceptable Activities for a Licensed Educator.

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Inservice:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled inservice, or

(b) a request submitted through the computerized inservice program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled inservice.

(3) Each clock hour of authorized inservice time equals one professional development point.

(4) The inservice shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation.

D. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

(2) One license point is awarded for each clock hour of participation.

(3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.

E. Service in a leadership role in a national, state-wide or district recognized professional education organization:

(1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.

(2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.

F. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities include conducting educational research or investigating educational innovations.

(2) This research activity shall follow school and district policy.

(3) An inactive educator may conduct research and receive professional development points on programs or issues approved by a practicing administrator.

(4) One license point is awarded for each clock hour of participation.

G. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educators's principal/supervisor.

(3) One license point is awarded for each clock hour of participation.

H. Substituting in a unit of the public education system or an accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501C and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle as a substitute.

I. A license-holder who instructs students in a professional or volunteer capacity in a unit of the public education system or an accredited private school may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle. Paraprofessionals/volunteers may accrue one professional development point for every three hours of paraprofessional/volunteer service, as determined and verified by the building principal or supervisor.

J. Up to 50 license points may be earned in any one or any combination of categories D, E and F above.

R277-501-4. NCLB Highly Qualified - Secondary.

In order to meet the federal requirements under a Highly Objective Uniform Statewide System of Evaluation (HOUSSE), a secondary educator shall have a bachelor's degree, an educator license and one of the following for each of the teacher's NCLB Core academic subject assignments:

A. a University major degree, masters degree, doctoral degree or National Board Certification; or

B. documentation that the teacher has passed, at a level designated by the USOE, an appropriate USOE-approved subject area test(s); or

C. an endorsement in a subject area directly related to the educator's academic major; or

D. documentation of coursework equivalent to a major degree (30 semester or 45 quarter hours); or

E. documentation of satisfaction of Utah's HOUSSE requirements for assignments not directly related to the educator's academic major:

(1) a current endorsement for the assignment; and

(2) completion of 200 professional development points directly related to the area in which the teacher seeks to meet the federal standard under R277-501(3) as applicable. (No more than 100 points may be earned for successful teaching in related area(s)); and

(3) all Utah secondary teachers who teach NCLB content courses shall have points and documentation of highly qualified status before June 30, 2006; and

(4) documentation includes official transcripts, annual teaching evaluation(s), data of adequate student achievement.

R277-501-5. NCLB Highly Qualified - Elementary and Early Childhood.

A. In order to meet the federal requirements under a Highly Objective Uniform Statewide System of Evaluation (HOUSSE), an elementary/early childhood educator shall satisfy before June 30, 2006 R277-501-5A (1) and (2) and (3)(a) or (b), and B or C as provided below:

(1) the educator has a current Utah educator license; and

(2) the educator is assigned consistent with the teacher's current state educator license; and

(3) the educator shall:

(a) have completed an elementary or early childhood major or both from an accredited college or university; or

(b) the teacher's employer may review the teacher's college/university transcripts and subsequent professional development to document that the following have been satisfied with academic grades of C or better:

(i) nine semester hours of language arts/reading or the equivalent; and

(ii) six semester hours of physical/biological science or the equivalent; and

(iii) nine semester hours of social sciences or the equivalent; and

(iv) three semester hours of the arts or the equivalent; and

(v) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

(vi) six semester hours of elementary/early childhood methodology (block); and

B. the educator has obtained a Level 2 license; or

C. An elementary/early childhood teacher shall pass Board-approved content test(s).

R277-501-6. Required Renewal License Points for Designated License Holders.

A. Level 1 license holder with no licensed educator

experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

B. Level 1 license holder with one year licensed educator experience within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) any years taught shall have satisfactory evaluation(s).

C. Level 1 license holder with two years licensed educator experience within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

D. Level 1 license holder with three years licensed educator experience within a three year period.

(1) An active educator shall earn at least 25 professional development points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

E. An educator seeking a Level 2 license shall notify the USOE of completion of Level 2 license prerequisites consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and R277-502, Educator Licensing and Data Retention.

F. Level 2 license holder:

(1) An active educator shall earn at least 100 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

G. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree in education or in a field related to a content area in a unit of the public education system or an accredited private school shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

H. Teachers seeking license renewal who do not meet NCLB standards shall focus 100 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major or major equivalent.

R277-501-7. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.

A. Level 2 active educators:

(1) A licensed educator whose license expires June 30, 2004 shall earn 80 license points between July 1, 1999 and June 30, 2004 and shall provide verification of employment.

(2) A licensed educator whose license expires June 30, 2005 shall earn 100 license points between July 1, 1999 and June 30, 2005 and shall provide verification of employment.

B. Level 2 inactive educators:

(1) A licensed educator whose license expires on June 30, 2004 shall earn 180 license points between July 1, 1999 and June 30, 2004.

(2) A licensed educator whose license expires after June 30, 2004 shall earn 200 license points during the renewal period.

R277-501-8. Miscellaneous Renewal Information.

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with federal and state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor.

(6) If an educator is not employed in education at the renewal date, the educator shall:

(a) review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form, or

(b) review the professional development plan and personally sign the verification form.

B. Each Utah license holder shall be responsible for maintaining a professional development folder.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development folder shall be retained by the educator for a minimum of two renewal cycles.

C. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200 between January 1 and June 30 of the renewal year.

(1) Forms that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or educator license renewal folders or records.

D. License holders may begin to acquire professional development points under this rule as of July 1, 1999.

E. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

F. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

G. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall be charged a renewal fee consistent with R277-503.

H. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

I. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September

15, 1999, the effective date of R277-521.

(2) All specialists shall be considered Level 1 license holders.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

J. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:

(1) satisfactory completion of the educator's employing school district's district-specific professional development plan; and

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

K. Completion of relicensure requirements by an educator under R277-501-6 or R277-501-8J, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

L. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.

KEY: educational program evaluations, educator license renewal

July 16, 2004	**Art X Sec 3**
Notice of Continuation February 23, 2005	**53A-6-104**
	53A-1-401(3)

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.
R317-4-1. Definitions.

1.1. "Absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.2. "Absorption system" means a device constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.3. "Absorption trench" means standard trenches, shallow trenches with capping fill, and chambered trenches constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.4. "Alternative onsite wastewater system" means a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state.

1.5. "At-Grade" System means an alternative type of onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within a fill body that extends above that grade.

1.6. "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but is not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

1.7. "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, an onsite wastewater system or other point of disposal. It is synonymous with "house sewer".

1.8. "Chambered trench" means a type of absorption system where the media consists of an open bottom, chamber structure of an approved material and design, which may be used as a substitute for the gravel media with a perforated distribution pipe.

1.9. "Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

1.10. "Conventional system" means an onsite wastewater system which consists of a building sewer, a septic tank, and an absorption system consisting of a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an absorption bed.

1.11. "Curtain drain" means any ground water interceptor or drainage system that is gravel backfilled and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

1.12. "Deep wall trench" means an absorption system consisting of deep trenches filled with clean, coarse filter material, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe, into which septic tank effluent is discharged for seepage into the soil.

1.13. "Division" means the Utah Division of Water Quality.

1.14. "Disposal area" means the entire area used for the subsurface treatment and dispersion of septic tank effluent by an absorption system.

1.15. "Distribution box" means a watertight structure which receives septic tank effluent and distributes it concurrently, in essentially equal portions, into two or more distribution pipes leading to an absorption system.

1.16. "Distribution pipe" means approved perforated pipe used in the dispersion of septic tank effluent into an absorption system.

1.17. "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, excluding non-domestic wastewater. It is synonymous with the term "sewage".

1.18. "Domestic septage" means the semi-liquid material that is pumped out of septic tanks receiving domestic wastewater. It consists of the sludge, the liquid, and the scum layer of the septic tank.

1.19. "Drainage system" means all the piping within public or private premises, which conveys sewage or other liquid wastes to a legal point of treatment and disposal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

1.20. "Drop box" means a watertight structure which receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

1.21. "Dwelling" means any structure, building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to, houses, mobile homes, hotels, motels, apartments, business, and industrial establishments.

1.22. "Earth fill" means an excavated or otherwise disturbed suitable soil which is imported and placed over the native soil. It is characterized by having no distinct horizons or color patterns, as found in naturally developed undisturbed soils.

1.23. "Effluent lift pump" means a pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.

1.24. "Ejector pump" means a device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.

1.25. "Experimental onsite wastewater system" means an onsite wastewater treatment and disposal system which is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

1.26. "Final local health department approval" means, for the purposes of the grandfather provisions in R317-4-2 (Table 1, footnote a) and R317-4-3, the approval given by a local health department which would allow construction and installation of subdivision improvements. Note: Even though final local health department approval may have been given for a subdivision, individual lot approval would still be required for issuance of a building permit on each lot.

1.27. "Ground water" means that portion of subsurface water that is in the zone of soil saturation.

1.28. "Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

1.29. "Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

1.30. "Impervious strata" means a layer which prevents water or root penetration. In addition, it shall be defined as having a percolation rate greater than 60 minutes per inch.

1.31. "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

1.32. "Liquid waste operation" means any business activity or solicitation by which liquid wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

1.33. "Liquid waste pumper" means any person who conducts

a liquid waste operation business.

1.34. "Local health department" means a city-county or multi-county local health department established under Title 26A.

1.35. "Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and shall not include any part of the right-of-way of a street or road.

1.36. "Malfunctioning or failing system" means an onsite wastewater system which is not functioning in compliance with the requirements of this regulation and includes, but is not limited to, the following:

A. Absorption systems which seep or flow to the surface of the ground or into waters of the state.

B. Systems which have overflow from any of their components.

C. Systems which, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system.

D. Systems discharging effluent which does not comply with applicable effluent discharge standards.

E. Leaking septic tanks.

1.37. "Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

1.38. "Mound System" means an alternative onsite wastewater system where the bottom of the absorption system is placed above the elevation of the existing site grade, and the absorption system is contained in a mounded fill body above that grade.

1.39. "Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

1.40. "Non-public water source" means a culinary water source that is not defined as a public water source.

1.41. "Onsite Wastewater System" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank and an absorption system.

1.42. "Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

1.43. "Percolation test" means the method used to measure the percolation rate of water into soil as described in these rules.

1.44. "Permeability" means the rate at which a soil transmits water when saturated.

1.45. "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state (Section 19-1-103).

1.46. "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety (Section 19-5-102).

1.47. "Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

1.48. "Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in R309.

1.49. "Regulatory Authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

1.50. "Replacement area" means sufficient land with suitable soil, excluding streets, roads, and permanent structures, which complies with the setback requirements of these rules, and is intended for the 100 percent replacement of absorption systems.

1.51. "Restrictive layer" means a layer in the soil that because of its structure or low permeability does not allow water entering from above to pass through as rapidly as it accumulates. During some part of every year, a restrictive layer is likely to have temporarily perched ground water table accumulated above it.

1.52. "Scum" means a mass of sewage solids floating on the surface of wastes in a septic tank which is buoyed up by entrained gas, grease, or other substances.

1.53. "Seepage pit" means an absorption system consisting of a covered pit into which septic tank effluent is discharged.

1.54. "Septic tank" means a watertight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system meeting the requirements of these rules.

1.55. "Septic tank effluent" means partially treated sewage which is discharged from a septic tank.

1.56. "Sewage holding tank" means a watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal at an approved site or treatment facility.

1.57. "Shall" means a mandatory requirement except when modified by action of the Department on the basis of justifying facts submitted as part of plans and specifications for a specific installation.

1.58. "Shallow trenches with capping fill" means an absorption trench which meets all of the requirements of standard trenches except for the elevation of the installed trench. The minimum depth of installation is 10 inches from the natural existing grade to the trench bottom. The gravel and soil fill required above the pipe are placed as a "cap" to the trenches, installed above the natural existing grade.

1.59. "Should" means recommended or preferred and is intended to mean a desirable standard.

1.60. "Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building, and shall be the only dwelling located on a lot with the usual accessory buildings.

1.61. "Sludge" means the accumulation of solids which have settled in a septic tank or a sewage holding tank.

1.62. "Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.

1.63. "Standard Trench" means an absorption system consisting of a series of covered, gravel-filled trenches into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.64. "Waste" or "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water (Section 19-5-102).

1.65. "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.66. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, 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 that 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, are not "waters of the state" (Section 19-5-102).

R317-4-2. Onsite Wastewater Systems–Administrative Requirements.

2.1. Scope. This rule shall apply to onsite wastewater systems.

2.2. Failure to Comply With Rules. Any person failing to comply with This rule will be subject to action as specified in Section 19-5-115 and 26A-1-123.

2.3. Onsite Wastewater System Required. The drainage system of each dwelling, building or premises covered herein shall receive all wastewater (including but not limited to bathroom, kitchen, and laundry wastes) and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made as follows:

A. To an onsite wastewater system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of wastewater system acceptable under R317-1, R317-3, R317-5, or R317-560.

2.4. Flows Prohibited From Entering Onsite Wastewater Systems. No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an onsite wastewater system, but shall be disposed of so they will in no way affect the system. Non domestic wastes such as chemicals, paints, or other substances which are detrimental to the proper functioning of an onsite wastewater system shall not be disposed of in such systems.

2.5. No Discharge to Surface Waters or Ground Surface. Effluent from any onsite wastewater system shall not be discharged to surface waters or upon the surface of the ground. Sewage shall not be discharged into any abandoned or unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

2.6. Repair of a Failing or Unapproved System. Whenever an onsite wastewater system is found by the regulatory authority to create or contribute to any dangerous or insanitary condition which may involve a public health hazard, a malfunctioning system, or deviates from the plans and specifications approved by such health authorities, the regulatory authority may order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

2.7. Procedure for Wastewater System Abandonment.

A. When a dwelling served by an onsite wastewater system is connected to a public sewer, the septic tank shall be abandoned and shall be disconnected from and bypassed with the building sewer unless otherwise approved by the regulatory authority.

B. Whenever the use of an onsite wastewater system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank wastes pumped out or otherwise disposed of in an approved manner, and the septic tank filled completely with earth, sand, or gravel within 30 days. The septic tank may also be removed within 30 days , at the owners discretion. The contents of a septic tank or other treatment device shall be disposed of only in a manner approved by the regulatory authority.

R317-4-3. Onsite Wastewater Systems General Requirements.

3.1. Units Required in an Onsite Wastewater System. The onsite wastewater system shall consist of the following components:

A. A building sewer.

B. A septic tank.

C. An absorption system. This may be a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit or pits, an absorption bed, or alternative or experimental systems as specified in this rule, depending on location, topography, soil conditions and ground water table.

3.2. Multiple Dwelling Units. Multiple dwelling units under individual ownership, except condominiums, shall not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the Utah Water Quality Board. Issuance of a construction permit by the Board shall constitute approval of plans and authorization for construction.

3.3. Review Criteria for Establishing Onsite Wastewater System Feasibility of Proposed Housing Subdivisions and Other Similar Developments. The local health department will review plans for proposed subdivisions and other similar developments for wastewater permit feasibility, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority. A plan of the subdivision shall be submitted to the local health department for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at two-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than two feet may be authorized on a case-by-case basis where it can be shown that they are adequate to describe all necessary terrain features. The plan must be specifically located with respect to the public land survey of Utah. A vicinity location map, preferably a U.S. Geological Survey 7-1/2 or 15 minute topographic map, shall be provided with the plan for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater system facilities proposed to serve the development must be submitted for review. The feasibility report shall include the following information:

A. Name and location of proposed development.

B. Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.

C. Statement of intended use of proposed development, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.

D. The proposed street and lot layout, the size and dimensions of each lot and the location of all water lines and easements, and if possible, the areas proposed for sewage disposal. All lots shall be consecutively numbered. The minimum required area of each lot shall be sufficient to permit the safe and effective use of an onsite wastewater system and shall include a replacement area for the absorption system. Plans used for multiple dwellings, commercial, and industrial purposes will require a study of anticipated sewage flows prior to developing suitable area requirements for sewage disposal.

E. Ground surface slope of areas proposed for onsite wastewater systems shall conform with the requirements of R317-4-4.

F. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

G. The locations of all rivers, streams, creeks, washes (dry or ephemeral), lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, within or adjacent to the area to be planned , and cutting or filling of lots that will affect building sites. Areas proposed for onsite wastewater systems shall be isolated from pertinent ground features as specified in Table 2.

H. Surface drainage systems shall be included on the plan , as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the surface drainage system shall show that the surface drainage structures, whether ditches, pipes, or culverts, will be adequate to handle all surface drainage so that it in no way will affect onsite wastewater systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.

I. If any part of a subdivision lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall

be clearly labeled on the plan with the words "flood plain area".

J. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat. All soil tests shall be conducted at the owner's expense.

K. A report by an engineer, geologist, or other person qualified by training and experience to prepare such reports must be submitted to show a comprehensive log of soil conditions for each lot proposed for an onsite wastewater system.

1. A sufficient number of soil exploration pits shall be dug on the property to provide an accurate description of subsurface soil conditions. Soil description shall conform with the United States Department of Agriculture soil classification system. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of ten feet, and at least four feet below the bottom of proposed absorption systems. One end of each pit should be sloped gently to permit easy entry if necessary. Deeper soil exploration pits are required if deep absorption systems, such as deep wall trenches or seepage pits, are proposed.

2. For each soil exploration pit, a log of the subsurface formations encountered must be submitted for review which describes the texture, structure, and depth of each soil type, the depth of the ground water table if encountered, and any indications of the maximum ground water table.

3. Soil exploration pits and percolation tests shall be made at the rate of at least one test per lot. The local health department may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation test data. Percolation tests shall be conducted in accordance with R317-4-5. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review. Soil exploration pits and percolation tests must be conducted as closely as possible to the absorption system sites on the lots or parcels. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-4-5 cannot be met or where the percolation rate is slower than 60 minutes per inch or faster than one minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits or percolation tests.

L. A statement by an engineer, geologist, or other person qualified by training and experience to prepare such statements, must be submitted indicating the present and maximum ground water table throughout the development. If there is evidence that the ground water table ever rises to less than two feet from the bottom of the proposed absorption systems , onsite wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-4-5.

M. If ground surface slopes exceed four percent, or if soil conditions, drainage channels, ditches, ponds or watercourses are located in or near the project so as to complicate design and location of an onsite wastewater systems, a detailed system layout shall be provided for those lots presenting the greatest design difficulty. A typical lot layout will include, but not be limited to the following information, and shall be drawn to scale:

1. All critical dimensions and distances for the selected lot(s), including the distance of the onsite wastewater system from lakes, ponds, watercourses, etc.

2. Location of dwelling, with distances from street and property lines.

3. Location of water lines, water supply, onsite wastewater system, property lines, and lot easements.

4. Capacity of septic tank and dimensions and cross-section of absorption system.

5. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

6. If nonpublic wells or springs are to be provided, the plan shall show a typical lot layout indicating the relative location of the building, well or spring, and onsite wastewater system.

N. If proposed developments are located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface sewage flow.

O. Excessively Permeable Soil and Blow Sand. Soil having excessively high permeability, such as cobbles or gravels with little fines and large voids, affords little filtering action to effluents flowing through it and may constitute grounds for rejection of sites. The extremely fine-grained "blow sand" (aeolian sand) found in some parts of Utah is unsuitable for absorption systems, and onsite wastewater system for installation in such blow sand conditions shall not be approved. This shall not apply to lots which have received final local health department approval prior to the effective date of this rule.

1. Percolation test results in blow sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots which are exempt as described above, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of the minimum acceptable percolation rate (60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 30 minutes per inch for absorption beds).

2. Prohibition of Onsite Wastewater Systems. If soil studies described in the foregoing paragraphs indicate conditions which fail in any way to meet the requirements specified herein, the use of onsite wastewater systems in the area of study will be prohibited.

P. After review of all information, plans, and proposals, the regulatory authority will send a letter to the individual who submitted the feasibility report stating the results of the review or the need for additional information. An affirmative statement of feasibility does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

3.4. Submission, Review, and Approval of Plans for Onsite Wastewater Systems.

A. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive domestic wastewater, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, shall be submitted to, and approved by the local health department having jurisdiction before construction of either the onsite wastewater system or building to be served by the onsite wastewater system may begin. Details for said site, plans, and specifications are listed in R317-4-4. After January 1, 2002, the design must be prepared in accordance with certification requirements in R317-11.

B. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive nondomestic wastewater shall be submitted to and approved by the Division of Water Quality.

C. The local health department having jurisdiction, or the Division, shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, written approval shall be issued to the individual making the submittal and the plans shall be stamped

indicating approval. Construction shall not commence until the plans have been approved by the regulatory authority. The installer shall not deviate from the approved design without the approval of the reviewing regulatory authority.

D. Depending on the individual site and circumstances, or as determined by the local board of health some or all of the following information may be required. Compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Onsite wastewater systems must be constructed and installed in accordance with these rules.

E. In order that approval can be expedited, plans submitted for review must be drawn to scale (1" = 8', 16', etc. but not exceed 1" = 30'), or dimensions indicated. Plans must be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Plan information that may be required is as follows:

1. Plot or property plan showing:

a. Date of application.

b. Direction of north.

c. Lot size and dimensions.

d. Legal description of property if available.

e. Ground surface contours (preferably at two-foot intervals) of both the original and final (proposed) grades of the property, or relative elevations using an established bench mark.

f. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

g. Location and explanation of type of dwelling to be served by an onsite wastewater system.

h. Maximum number of bedrooms (including statement of whether a finished or unfinished basement will be provided), or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

i. Location and dimensions of the essential components of the onsite wastewater system.

j. Location of soil exploration pit(s) and percolation test holes.

k. Location of building sewer and water service line to serve dwelling.

l. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

m. Distance to nearest public water main and size of main.

n. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

o. Location of easements or drainage right-of-ways affecting the property.

p. Location of all streams, ditches, watercourses, ponds, subsurface drains, etc., (whether intermittent or year-round) within 100 feet of proposed onsite wastewater system.

2. Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of ten feet in the absorption system area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than six feet, soil exploration pits must extend to a depth of at least four feet below the bottom of the proposed absorption system excavation. One end of each pit should be sloped gently to permit easy entry if necessary. Whenever possible data from published soil studies of the site should also be submitted. Soil logs should be prepared in accordance with the United States Department of Agriculture soil classification system.

3. Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for onsite wastewater system site.

4. The results of at least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, in the area of the proposed absorption system, conducted according to R317-4-5. Percolation tests should be conducted at a depth of six inches below the bottom of the proposed absorption system excavation and test results should be submitted on a "Percolation Test Certificate" obtainable upon request. If a deep wall trench or seepage pit is proposed, a completed "Deep Wall Trench Construction Certificate" may be submitted if percolation tests are not required.

5. Relative elevations (using an established bench mark) of the:

a. Building drain outlet.

b. The inlet and outlet inverts of the septic tank(s).

c. The outlet invert of the distribution box (if provided) and the ends or corners of each distribution pipe lateral in the absorption system.

d. The final ground surface over the absorption system.

e. Septic tank access cover, including length of extension, if used.

6. Schedule or grade, material, diameter, and minimum slope of building sewer.

7. Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

8. Details of drop boxes or distribution boxes (if provided)

9. Absorption system details which include the following:

a. Schedule or grade, material, and diameter of distribution pipes.

b. Required and proposed area for absorption system.

c. Length, slope, and spacing of each distribution pipeline.

d. Maximum slope across ground surface of absorption system area.

e. Slope of distribution pipelines (maximum slope four inches/100 feet., level preferred)

f. Distance of distribution pipes from trees, cut banks, fills or other subsurface disposal systems.

g. Type and size of filter material to be used (must be clean, free from fines, etc.).

h. Cross section of absorption system showing:

i. Depth and width of absorption system excavation.

ii. Depth of distribution pipe.

iii. Depth of filter material.

iv. Barrier (i.e., synthetic filter fabric, straw, etc.) used to separate filter material from backfill.

v. Depth of backfill.

10. Schedule or grade, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the onsite wastewater system.

11. Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location and (C) distance from onsite wastewater disposal system. If plan approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

12. Complete address of dwelling to be served by this onsite wastewater system. Also the name, current address, and telephone number of:

a. The person who will own the proposed onsite wastewater system.

b. The person who will construct and install the onsite wastewater system.

c. If mortgage loan for dwelling is insured or guaranteed by a federal agency, the name and local address of that agency.

F. All applicants requesting plan approval for an onsite wastewater system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

G. Applications will be rejected if proper information is not submitted.

3.5. Final On-Site Inspection.

A. After an onsite wastewater system has been installed and before it is backfilled or used, the entire system shall be inspected by the appropriate regulatory authority to determine compliance with these rules. For deep wall trenches and seepage pits, the regulatory

authority should make at least two inspections, with the first inspection being made following the excavation and the second inspection after the trench or pit has been filled with stone or constructed, but before any backfilling has occurred.

B. Each septic tank shall be tested for water tightness before backfilling in accordance with the requirements and procedure outlined in the American Society for Testing Materials' Standard ASTM C-1227, or concrete tanks should be filled 24 hours before the inspection to allow stabilization of the water level. During the inspection there shall be no change in the water level for 30 minutes. Nor shall moving water, into or out of the tank , be visible. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to three inches below the joint to provide adequate support to the seam of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

R317-4-4. Onsite Wastewater Systems Design Requirements.

4.1. Site Location and Installation.

A. Onsite wastewater systems are not suitable for all areas and situations. Location and installation of each system, or other approved means of disposal, shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the State. Systems shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, to include all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement must accommodate the entire onsite wastewater system, including setbacks (see Table 2) which extend beyond the property line.

B. In determining a suitable location for the system, due consideration shall be given to such factors as: size and shape of the lot; slope of natural and finished grade; location of existing and future water supplies; depth to ground water and bedrock; soil characteristics and depth; potential flooding or storm catchment; possible expansion of the system, and future connection to a public sewer system.

4.2. Lot Size Requirements.

A. One of the following two methods shall be used for determining minimum lot size for a single-family dwelling when an onsite wastewater system is to be used:

METHOD 1:-The local health department having jurisdiction may determine minimum lot size. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report which accurately takes into account, but is not limited to, the following factors:

A. Soil type and depth.
B. Area drainage, lot drainage, and potential for flooding.
C. Protection of surface and ground waters.
D. Setbacks from property lines, water supplies, etc.
E. Source of culinary water.
F. Topography, geology, hydrology and ground cover.
G. Availability of public sewers.
H. Activity or land use, present and anticipated.
I. Growth patterns.
J. Individual and accumulated gross effects on water quality.
K. Reserve areas for additional subsurface disposal.
L. Anticipated sewage volume.
M. Climatic conditions.
N. Installation plans for wastewater system.
O. Area to be utilized by dwelling and other structures.

Under this method, local health departments may elect to involve other affected governmental entities and the Division in making joint lot size determinations. The Division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request.

METHOD 2:-Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Table 1 shall be met:

TABLE 1
Minimum Lot Size(a)

WATER SUPPLY	SOIL TYPE 1	2	3	4	5
Public(b)	12,000 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	--
Individual each lot(c)	1 acre	1.25 acres	1.5 acres	1.75 acres	--

SOIL TYPE	DRAINAGE	PERCOLATION RATE(d)(e)	APPROXIMATE SOIL CLASSIFICATION SYMBOL (USDA Soil Classification System)(e)(f)
1	Good	1-15	Sand, Loamy Sand
2	Fair	16-30	Sandy Loam, Loam
3	Poor	30-45	Loam, Silty Loam
4	Marginal	46-60	Sandy Clay Loam. Silty Clay Loam,(g).
5	Unacceptable (h)		Clay Loam, Clay Bedrock, fractured bedrock, hardpan, (including unacceptable ground water table elevations)

FOOTNOTES

(a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements shall not apply to building lots which have been recorded or have received final local health department approval prior to May 21, 1984. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded and other approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot must also be acceptable to the regulatory authority.

(b) This category shall also include lots served by a nonpublic water source that is not located on the lots.

(c) See the isolation requirements in Table 2.

(d) When deep wall trenches or seepage pits will be used, the percolation test may be estimated by a qualified person in accordance with R317-4-9.

(e) When there is a substantial discrepancy between the percolation rate and the approximate soil classification, it shall be resolved to the satisfaction of the regulatory authority, or the soil type requiring the largest lot shall be used.

(f) See Table 10 for a more detailed description of the USDA soil classification system.

(g) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

(h) Faster than one minute per inch, slower than 60 minutes per inch, or unsuitable soil formations.

B. Determination of minimum lot size by Methods 1 and 2 would not preempt local governments from establishing larger minimum lot sizes.

C. Available pertinent land for construction of other than single-family dwellings should have a minimum net available area in the amount of 22 square feet per gallon of estimated sewage computed from the fixture unit values established by Table 3 or other acceptable methods. Each fixture unit should be rated at not less than 25 gallons per day. One-half of this pertinent land area should be available for the absorption system.

4.3. Isolation of Onsite Wastewater Systems. Minimum distances between components of an onsite wastewater disposal system and pertinent ground features shall be as prescribed in Table 2.

TABLE 2
Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Building Sewer	to Septic Tank
Public Water Supply Sources		
Protected Aquifer Well (c)	100	100
Unprotected Aquifer Well (c)	(d)	(d)
Spring (c)	(d)	(d)
Individual or Nonpublic Water Supply Sources		
Grouted Well (k)	25	50
Ungrouted Well (k)	25	50
Spring (c)	25	50
Non-culinary Well or Spring	--	25
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	--	25
Lake, Pond, Reservoir	--	25
Culinary Water Supply Line	(g)	10
Foundation of any building including garages and outbuildings:		
without foundation drains	3	5
with foundation drains	3	25
Curtain drains		
located up gradient	--	10
located down gradient	10	25
Property line	5	5
Swimming pool wall (subsurface)	3	10
Downslope cut bank or top of embankment	--	10
Dry washes, gulches, and gullies	--	25
Catch basin or dry well	--	5
Trees and shrubs (h)	--	--
Deep Wall Trench (b)	--	5
Absorption Bed	--	5
Standard/Chamber Trench	--	5

Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Standard Trench	to Deep Wall Trench	to Absorption Bed
Public Water Supply Sources			
Protected Aquifer Well (c)	100	100	100
Unprotected Aquifer Well (c)	(d)	(d)	(d)
Spring (c)	(d)	(d)	(d)
Individual or Nonpublic Water Supply Sources			
Grouted Well (k)	100	100	100
Ungrouted Well (k)	200(e)	200(e)	200(e)
Spring (c)	200(e)	200(e)	200(e)
Non-culinary Well or Spring	100	100	100
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	100(f)	100(f)	100(f)
Lake, Pond, Reservoir	100	100	100
Culinary Water Supply Line	10(g)	10(g)	10(g)
Foundation of any building including garages and outbuildings:			
without foundation drains	5	20	5
with foundation drains	100	100	100
Curtain drains			
located up gradient	20	20	20
located down gradient	100	100	100
Property line	5	10	10
Swimming pool wall (subsurface)	25	25	25
Downslope cut bank or top of embankment	50	50	50
Dry washes, gulches, and gullies	50	50	50
Catch basin or dry well	25	25	25
Trees and shrubs (h)	5	5	5
Deep Wall Trench (b)	10	(i)	10
Absorption Bed	10	10	10
Standard Trench	(j)	10	10

FOOTNOTES

(a) All distances are from edge to edge. Where surface waters are involved, the distance shall be measured from the high water line.

(b) Seepage pits shall meet the same separation distances specified for deep wall trenches, except that seepage pits shall be separated from one another by at least a distance equal to 3 times the greatest diameter of either pit, with a minimum separation of 15 feet.

(c) As defined by R309-113-6. Distances to avoid contamination cannot always be predicted for varying conditions of soil or underlying bedrock and ground water. Absorption systems should be located as far away from wells, springs, and other water supplies as is practicable, and not on a direct slope above them. Compliance with separation requirements does not guarantee acceptable water quality in every instance. This is particularly applicable with shallow sources of ground water. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.

(d) It is recommended that the listed concentrated sources of pollution be located at least 1500 feet or as required by the Drinking Water Source Protection rules, from unprotected aquifer wells and springs used as public water sources. Any proposal to locate closer than 1500 feet from the property line must be reviewed and approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an onsite wastewater system closer than 1500 feet to a public unprotected aquifer well or spring must submit a report to the regulatory authority which considers the above items. The minimum required isolation distance where optimum conditions exist and with the approval of the regulatory authority may be 100 feet. R309-113 requires a protective zone, established by the public water supply owner, before a new source is approved. Public water sources which existed prior to the requirement for a protective zone may not have acquired one. Such circumstances must be reviewed by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source.

(e) Although this distance shall be generally adhered to as the minimum required separation distance, exceptions may be approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic ungrouted well or spring must submit a report to the regulatory authority which considers the above items. In no case shall the regulatory authority grant approval for an onsite wastewater system to be closer than 100 feet from an ungrouted well or a spring.

(f) Lining or enclosing watercourses with an acceptable impervious material may permit a reduction in the separation requirement. In situations where the bottom of a canal or watercourse is at a higher elevation than the ground in which the absorption system is to be installed, a reduction in the distance requirement may be justified, but each case must be decided on its own merits by the regulatory authority.

(g) If the water supply line is for a public water supply, the separation distance must comply with the requirements of R309. No water service line shall pass over any portion of an onsite wastewater system.

(h) Components which are not watertight should not extend into

actual or anticipated root systems of nearby trees. Trees and other large rooted plants shall not be allowed to grow over onsite wastewater systems. However, it is desirable to cover the area over onsite wastewater systems with lawn grass or other shallow-rooted plants. Onsite wastewater systems should not be located under vegetable gardens.

(i) For deep wall trenches, the separation distance must be at least equal to 3 times the deepest effective depth of either trench with a minimum separation of 12 feet between trenches.

(j) See R317-4-9, Table 9.

(k) A grouted well is a well constructed as required in the drinking water rules R309.

4.4. Estimates of Wastewater Quantity. Quantity of wastewater to be disposed of shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the nondisposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Table 3 shall be used to make estimates of flow. In no event shall the septic tank or absorption system be designed such that the anticipated maximum daily sewage flow exceeds the capacity for which the system was designed.

TABLE 3
Estimated Quantity of Domestic Wastewater(a)

Type of Establishment	Gallons per day
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarders	10 per person
Bowling Alleys	
a. with snack bar	100 per alley
b. with no snack bar	85 per alley
Camps	
a. modern camp	30 per person
b. semi-developed with flush toilets	30 per person
c. semi-developed with no flush toilets	5 per person
Churches	
a. per person	5
Condominiums, Multiple Family Dwellings, or Apartments	
a. with individual or common laundry facilities	400 per unit
b. with no individual or common laundry facilities	75 per person
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Gyms	
a. participant	25 per person
b. spectator	4 per person
Hairdresser	
a. per chair	50
b. per operator	35
Highway Rest Stops (improved, with restroom facilities)	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings (exclusive of industrial waste)	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer
Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space
Office Buildings and Business Establishments (Sanitary wastes only, per shift)	
a. with cafeteria	25 per employee
b. with no cafeteria	15 per employee
Picnic Parks (toilet wastes only)	5 per person
Restaurants(b)	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Recreational Vehicle Parks	
a. sanitary stations for self-contained vehicles	50 per space
b. dependent spaces (temporary or transient with no sewer connections)	50 per space
c. independent spaces (temporary or transient with sewer connections)	125 per space
Rooming House	40 per person
Sanitary Stations (per self-contained vehicle)	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations(c) (per vehicle served)	10
Single-Family Dwellings	(See Tables 7, 10, and 13)
Skating Rink, Dance Halls, etc.	
a. no kitchen wastes	10 per person
b. additional for kitchen wastes	3 per person
Ski Areas	
a. no kitchen wastes	10 per person
b. Additional for kitchen wastes	3 per person
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses(d)	10 per person
Taverns, Bars, Cocktail Lounges	20 per seat
Visitor Centers	5 per visitor

FOOTNOTES

(a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.

(b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

(c) Or, 250 gallons per day per pump.

(d) Or, 20 x water area + deck area.

4.5. Installation in Sloping Ground.

A. Construction of absorption systems on slopes in excess of 15 percent but not greater than 25 percent may be allowed providing that subsoil profiles indicate no restrictive layers of soil and appropriate engineering design is provided. Absorption systems placed in sloping ground shall be so constructed that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. Where the addition of fluids is judged to create an unstable slope, absorption systems will be prohibited.

B. Absorption systems shall be so located and constructed that there is a minimum of 50 feet from downhill slopes that exceed 35 percent.

C. Alternative systems shall be subject to the site slope limits specified in R317-4-11 for earth fill, "at-grade" systems and in mound systems.

4.6. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for 100 percent replacement of each absorption system. If approved by the regulatory authority, the area between standard trenches or deep wall trenches may be regarded as replacement area.

R317-4-5. Soil and Ground Water Requirements.

5.1. Soil Requirements.

A. In areas where onsite wastewater systems are to be constructed, soil cover must be adequate to insure at least 48 inches of suitable soil between bedrock formations or impervious strata and the bottom of the absorption system excavation. In cases where an approved fill is used, there shall be at least three feet of suitable soil from prevailing site grade to bedrock formations or impervious strata. For the purposes of this regulation, unsuitable soil or bedrock formations shall be deemed to be (1) soil or bedrock formations which are so slowly permeable that they prevent downward passage of effluent, or (2) soil or bedrock formations with open joints or solution channels which permit such rapid flow that effluent is not renovated. This includes coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable for absorption systems. Where a mound system is used, there shall be at least two feet of suitable soil from prevailing site grade to formations which will permit such rapid flow that effluent will not be renovated.

B. A suitable soil for absorption systems shall meet the following criteria:

1. The distance between the maximum ground water table and the bottom of the absorption system excavation complies with the requirements of these rules.

2. Has the capacity to adequately disperse the designed effluent loading as determined by field percolation rates, or by other approved soil tests.

3. Does not exhibit inhibiting swelling or collapsing characteristics.

4. Does not visually exhibit a jointed or fractured pattern of an underlying bedrock.

5. Is not consolidated, cemented, indurated, or plugged by a buildup of secondary deposited calcium carbonate (caliche).

6. Acts as an effective effluent filter within its depth for the removal of pathogenic organisms.

7. Criteria for alternative onsite wastewater systems, as specified in R317-4-11 for earth fill systems, "at-grade" systems, and mound systems.

5.2. Ground Water Requirements.

A. In areas where absorption systems are to be constructed, the elevation of the anticipated maximum ground water table shall be at least 24 inches below the bottom of the absorption system excavation and at least 48 inches below finished grade. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21,1984 shall be subject to the ground water table separation requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the ground water table separation requirements of this regulation if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

B. The maximum ground water table shall be determined by one or more of the following methods:

1. Direct visual observation of the maximum ground water table in a soil exploration pit.

2. Regular monitoring of the "ground water table" or "ground water table, perched" in an observation well for a period of one year, or for the period of maximum ground water table. Ground water monitoring shall be required where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system, or where alternative onsite wastewater systems may be considered.

3. Observation of soil in a soil exploration pit for evidence of crystals of salt left by the maximum ground water table; or chemically reduced iron in the soil, reflected by a mottled coloring.

C. If the highest elevation that the top of the ground water table or ground water table, perched, ever recorded, is expected to reach for any reason, including irrigation induced water table, over the full operating life of the conventional onsite wastewater system is within 24 inches of the bottom of the conventional onsite wastewater system the use of conventional onsite wastewater systems in the area of study will be prohibited.

D. Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

E. A curtain drain or other effective ground water interceptor may be required to be installed for an absorption system as a condition for its approval. The health authority may require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

5.3. Soil Exploration Requirements.

A. Suitable soil exploration pits, of sufficient size to permit visual inspection, and to a minimum depth of ten feet, or at least 48 inches below the bottom of proposed onsite wastewater systems, shall be dug on each absorption system site to determine the ground water table and subsurface soil and bedrock conditions. One end of each pit should be sloped gently to permit easy entry if necessary. A log of the soil and bedrock formations encountered must be submitted describing the texture, structure, and depth of each soil type, the depth of the ground water table encountered, and indications of the maximum elevation of the ground water table. Soil logs should be prepared in accordance with the United States Department of Agriculture Soil Classification System by qualified individuals. After January 1, 2002, the soil exploration and evaluation must be done in accordance with certification requirements in R317-11.

B. Proper safety precautions shall be taken whenever soil exploration pits or other excavations are dug for onsite wastewater systems.

5.4. Percolation Test Requirements. After January 1, 2002, percolation tests must be done in accordance with certification requirements in R317-11. At least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, shall be performed on the site of each absorption system to determine minimum required absorption area. More tests may be required where soil structure varies, where limiting geologic conditions are encountered, where the proposed property improvements will require large disposal systems, or where the health authority deems it necessary. Percolation tests shall be conducted in accordance with the instructions in this section.

Absorption systems are not permitted in areas where the soil percolation rate is slower than 60 minutes per inch or faster than one minute per inch.

A. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be used for onsite wastewater systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the regulatory authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Test results when required shall be considered an essential part of plans for absorption systems and shall be submitted on a signed "Percolation Test Certificate" or equivalent. Copies of the recommended Percolation Test Certificate form can be obtained from the Division of Water Quality. The test certificate must contain the following:

1. a signed statement certifying that the tests were conducted in accordance with this rule;
2. The name of the individual conducting the tests;
3. The location of the property
4. the depth and rate of each test in minutes per inch;
5. the date of the tests;
6. the logs of the soil exploration pits, including a statement of soil explorations to a depth of ten feet. In the event that absorption systems will be deeper than six feet, soil explorations must extend to a depth of at least four feet below the bottom of the proposed absorption system including, deep wall trench, seepage pit or absorption bed;
7. a statement of the present and anticipated maximum ground water table;
8. all other factors affecting percolation test results.

C. Percolation tests shall be conducted at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, in accordance with the following:

1. Conditions Prohibited for Test Holes. Percolation tests shall not be conducted in test holes which extend into ground water, bedrock, or frozen ground. Where a fissured soil formation is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests. Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test should be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Number and Location of Percolation Tests. One or more tests shall be made in separate test holes on the proposed absorption system site to assure that the results are representative of the soil conditions present. Percolation tests conducted for deep wall trenches and seepage pits shall comply with R317-4-9. Where questionable or poor soil conditions exist, the number of percolation tests and soil explorations necessary to yield accurate, representative information shall be determined by the regulatory authority and may be accepted only if conducted with an authorized representative present.

4. Test Holes to Commence in Specially Prepared Excavations. All percolation test holes should commence in specially prepared larger excavations (preferably made with a backhoe) of sufficient size which extend to a depth approximately six inches above the strata to be tested.

5. Type, Depth, and Dimensions of Test Holes. Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from four to 18 inches (preferably eight to twelve inches). The vertical sides shall be at least twelve inches deep, terminating in the soil at an elevation six inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

6. Preparation of Percolation Test Hole. Carefully roughen or scratch the bottom and sides of the hole with a knife blade or other sharp pointed instrument, in order to remove any smeared soil surfaces and to provide an open, natural soil interface into which water may percolate. Remove all loose soil from the bottom of the hole. Add two to three inches of clean coarse sand gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean coarse gravel.

7. Saturation and Swelling of the Soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

8. Placing Water in Test Holes. Water should be placed carefully into the test holes by means of a small-diameter siphon hose or other suitable method to prevent washing down the side of the hole.

9. Percolation Rate Measurement, General. Necessary equipment should consist of a tape measure (with at least 1/16-inch calibration) or float gauge and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

10. Test Procedure for Sandy or Granular Soils. For tests in sandy or granular soils containing little or no clay, the hole shall be carefully filled with clear water to a minimum depth of twelve inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least twelve inches above the gravel seeps away in ten minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than six inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at ten minute intervals for a period of one hour.

c. If six inches of water seeps away in less than ten minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed six inches.

d. The final water level drop shall be used to calculate the percolation rate.

11. Test Procedure for Other Soils Not Meeting the Above Requirements. The hole shall be carefully filled with clear water and a minimum depth of twelve inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours shall not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil which has sloughed into the hole shall be removed and water shall be adjusted to six inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

c. The hole shall be filled with clear water to a point not more than six inches above the gravel whenever it becomes nearly empty.

d. Adjustments of the water level shall not be made during the last 3 measurement periods except to the limits of the last water level drop.

e. When the first six inches of water seeps away in less than 30 minutes, the time interval between measurements shall be ten minutes, and the test run for one hour.

f. The water depth shall not exceed six inches at any time during the measurement period.

g. The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

12. Calculation of Percolation Rate. The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

13. Using Percolation Rate to Determine Absorption Area. The minimum or slowest percolation rate shall be used in calculating the required absorption area.

R317-4-6. Building Sewer and Distribution Pipe.

6.1. General Requirements. Pipe, pipe fittings, and similar materials comprising building sewers shall comply with the following:

A. They shall be composed of plastic, or other suitable material approved by the Division, and shall conform to the applicable standards as outlined in Tables in this section.

B. The following is a list of solid-wall pipe that has been approved for building sewers.

C. The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE 4

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	(d) ASTM D-2680 ASTM D-2751 (c) (pressure)
B. Polyvinyl Chloride (PVC) PVC-DWV Schedule 40	ASTM D-2665
PVC - Sewer	ASTM D-3033 ASTM D-3034 (pressure) ASTM F-789

D. The following is a list of solid-wall perforated pipe, approved as distribution pipe in absorption systems. Solid-wall pipe must be perforated in accordance with R317-4-6, and all burrs must be removed from the inside of the pipe. The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE 5

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	ASTM D-2661 ASTM D-2751
B. Polyethylene, Smooth Wall (PE)	ASTM D-1248 ASTM D-3350
C. Polyvinyl Chloride (PVC) Schedule 40	(e) ASTM D-2729 ASTM D-2665 (pressure) ASTM D-3033 ASTM D-3034 (pressure)

FOOTNOTES

(a) Each length of building sewer and absorption system pipe shall be stamped or marked as required by the International Plumbing Code.

(b) Building sewers include (1) the pipe installed between the building and the septic tank and (2) between the septic tank and the distribution box (or absorption system). The installation of building sewers shall comply with the International Plumbing Code.

(c) American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(d) For domestic sewage only, free from industrial wastes.

(e) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this pipe is not approved for building sewer application.

E. Where two different sizes or types of sewer pipes are connected, a proper type of fitting or conversion adapter shall be used.

F. They shall have a minimum inside diameter of four inches. They shall have watertight, root-proof joints and shall not receive any ground water or surface runoff. They shall be laid in straight alignment and on a firm foundation of undisturbed earth or acceptably stabilized earth that is not subject to settling.

G. Building sewers shall be laid on a uniform minimum slope of not less than 1/4-inch per foot (2.08 percent slope). When it is impractical, due to structural features or the arrangement of any building, to obtain a slope of 1/4-inch per foot, a building sewer of four inches in diameter or larger may have a slope of not less than 1/8-inch per foot (1.04 percent slope) when approved by the regulatory authority.

H. The lines shall have cleanouts every 100 feet and at all changes in direction or grade, except where manholes are installed every 400 feet and at every change in direction or grade. On four-inch and six-inch lines, two 45 degree bends with cleanout will be acceptable in lieu of a manhole, and 90 degree ells are not recommended.

I. Building sewers shall be separated from water service pipes in separate trenches and by at least ten feet horizontally except that they may be placed in the same trench when the following three conditions are met:

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the building sewer.

2. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench.

3. The number of joints in the service pipe shall be kept to a minimum, and the materials and joints of both the sewer and water service pipe shall be of a strength and durability to prevent leakage under adverse conditions.

J. If the water service pipe must cross the building sewer, it shall be at least 18 inches above the latter within ten feet of the crossing. Joints in water service pipes should be located at least ten feet from such crossings.

6.2. Ejector Pumps, Effluent Lift Pumps, and Pump Wells.

A. Ejector pumps discharging into septic tanks shall comply with the International Plumbing Code.

B. When septic tank effluent lift pumps and pump wells are part of an onsite wastewater disposal system, they shall comply with the following:

1. Pumps shall be so placed as to be self-priming, and should operate under positive suction head at all times. A quick disconnect for pumps, such as a union, should be provided between the pump and the line leading to the absorption system. Pumps shall be adequately housed to protect the pump motors from bad weather and protection shall be given to prevent freezing in any portion of the unit. Except for single-family dwellings, pumps shall be installed in duplicate with either pump having adequate capacity to handle maximum flow.

2. Minimum capacity shall be 10 gallons per minute at the necessary discharge head. Pumps shall be capable of passing a 3/4-inch solid sphere and shall have a minimum 2-inch discharge. Suitable shutoff valves shall be placed on suction and discharge lines of each pump and a check valve shall be placed on each discharge line between the shutoff valve and the pump.

3. The pressure line shall be constructed of piping material of a bursting pressure of at least 100 psi and shall be of approved corrosion-resistant material. The pressure line shall be bedded in 3 inches of sand or pea gravel. Pumps may be oil filled submersible pumps or vertically-mounted column pumps. Impellers shall be of cast iron, bronze or other corrosion-resistant material. Level control shall be by a float switch or by other acceptable methods. The pump well shall be constructed of corrosion-resistant material of sufficient strength to withstand the soil pressures related to the depth of the sump, and shall be adequately protected against surface flooding. Capacity of the pump well shall not be less than 50 gallons, and shall be sized to provide between 3 and six pumping cycles per day. Pump wells shall have adequate ventilation and shall be provided

with a maintenance access manhole at the ground surface or above and of at least 24-inch diameter with a durable locking-type cover.

4. Power supply should be available from at least 2 independent generating sources, or emergency power equipment should be provided. Where power failure may result in objectionable conditions or unauthorized waste discharge, means for emergency operation shall be provided.

5. Electrical systems and components (i.e. motors, lights, cables, conduits, switch boxes, control circuits, etc.) in sewage pump wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class I, Group D, Division I locations. In addition, equipment located in the pump well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with a watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided in all pumping stations.

R317-4-7. Septic Tanks.

7.1. General Requirements.

A. Septic tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces, to provide settling of solids, accumulation of sludge and scum, and be accessible for inspection and cleaning as specified in the following paragraphs:

B. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality.

7.2. Overall Construction and Design Features.

A. Septic tanks may be constructed of the following:

1. Precast reinforced concrete
2. Fiberglass
3. Polyethylene
4. Poured-in-place concrete
5. Material approved by the Division

B. Septic tanks may have single or multiple compartments and may be oval, circular, rectangular, or square in plan, provided the distance between the inlet and outlet of the tank is at least equal to the liquid depth of the tank. In general, the tank length should be at least two to three times the tank width.

C. All septic tanks may have an effluent filter installed at the outlet of the tank. The filter shall prevent the passage of solid particles larger than a nominal 1/8 inch diameter sphere. The filter should be easily removed for routine servicing through watertight access from the ground surface, or be bypassed with a piping arrangement.

7.3. Plans for Tanks Required.

A. Plans for all septic tanks shall be submitted to the regulatory authority for approval. Such plans shall show all dimensions, capacities, reinforcing, and such other pertinent data as may be required. All septic tanks shall conform to the design drawings and all building shall be done under strict controlled supervision by the manufacturer.

B. Commercial septic tank manufacturers shall submit design plans for each tank model manufactured to the Division for review and approval. The manufacturer shall certify in writing to the Division that the septic tanks to be distributed for use in the State of Utah will comply with this regulation. It is recommended that such plans also be evaluated by a registered engineer as to surcharge, impact load, and deadload. Any changes in the design of commercially manufactured septic tanks shall be submitted to the Division for approval.

7.4. Tank Capacity for Single-Family Dwellings. The minimum liquid capacity of septic tanks serving single-family dwellings shall be based on the number of bedrooms in each dwelling, in accordance with Table 6.

TABLE 6
Minimum Capacities for Septic Tanks(a)

Number of Bedrooms(b)	Minimum Liquid Capacity(c)(d) (Gallons)
1	750
2 or 3	1000
4	1250
For each additional bedroom, add	250

FOOTNOTES

(a) Tanks larger than the minimum required capacity are generally more economical since they do not have to be cleaned as often.

(b) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms. Unfinished basements shall be counted as a minimum of one additional bedroom.

(c) The liquid capacity is calculated on the depth from the invert of the outlet pipe to the inside bottom of the tank. A variance of three percent in the required volume may be allowed.

(d) Table 6 provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

7.5. Tank Capacity for Commercial, Institutional, and Recreational Facilities, and Multiple Dwellings.

A. The minimum liquid capacity of septic tanks serving commercial, institutional, and recreational facilities, and multiple dwellings shall be determined on the following basis:

1. For wastewater flows up to 500 gallons per day, the liquid capacity of the tank shall be at least 750 gallons.

2. For wastewater flows between 500 and 1,500 gallons per day, the liquid capacity of the tank shall be at least 1.5 times the 24-hour estimated sewage flow (see Table 3).

3. For wastewater flows between 1,500 and 5,000 gallons per day, the liquid capacity of the tank shall equal at least 1,125 gallons plus 75 percent of the daily wastewater flow ($V = 1,125 + 0.75Q$ where V = liquid volume of the tank in gallons, and Q = wastewater discharge in gallons per day).

B. In cases where dwellings or facilities are subject to high peak sewage flows, the liquid capacity of the onsite wastewater system shall be increased as required by the regulatory authority.

7.6. Precast Reinforced Concrete Septic Tanks.

A. The walls and base of precast tanks shall be securely bonded together and the walls shall be of monolithic or keyed construction. The sidewalls and bottom of such tanks shall be at least 3 inches in thickness. The top shall have a minimum thickness of four inches. Such tanks shall have reinforcing of at least six inch x six inch No. 6, welded wire fabric, or equivalent. Exceptions to this reinforcing requirement may be considered by the Division based on an evaluation of acceptable structural engineering data submitted by the manufacturer. All concrete used in precast tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to assure reasonable watertightness. Precast sections shall be set evenly in a full bed of sealant. If grout is used it shall consist of two parts plaster sand to one part cement with sufficient water added to make the grout flow under its own weight. Excessively mortared joints should be trimmed flush. The inside and outside of each mortar joint shall be sealed with a waterproof bituminous sealing compound.

B. For the purpose of early reuse of forms, the concrete may be steam cured. Other curing by means of water spraying or a membrane curing compound may be used and shall comply to best acceptable methods as outlined in "Curing Concrete, ACI308-71," by American Concrete Institute, P.O. Box 19150, Detroit, Michigan 84219.

7.7. Fiberglass Septic Tanks.

A. Fiberglass septic tanks shall comply with the criteria for acceptance established in the "Interim Guide Criteria For Glass-Fiber-Reinforced Polyester Septic Tanks", International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los

Angeles, California 90032. The identifying seal of the International Association of Plumbing and Mechanical Officials must be permanently embossed in the fiberglass as evidence of compliance. The design requirements in R317-4-7 shall also be met. Other required identity marks must also comply with this rule.

B. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the Division.

C. The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the following installation procedures shall apply:

1. During installation, careful handling of the tank is necessary to prevent damage. Tanks shall not be installed under areas subject to vehicular traffic or heavy equipment.

2. There shall be a minimum of twelve inches of approved, compacted backfill material under the tank as a resting bed. The resting bed must be smooth and level.

3. The hole that the tank is to be installed in shall be large enough to allow a minimum of twelve inches from the ends and sides of the tank to the hole wall.

4. Approved backfill material shall be a naturally-rounded aggregate, clean and free flowing, with a particle size of 3/8-inch or less in diameter. Crushed stone or gravel of the same particle size may be used if naturally-rounded aggregate is not available, but should be washed and free flowing.

5. Backfilling shall be accomplished to the top of the tank in twelve -inch lifts with each layer being well compacted. Sharp tools should not be used near the septic tank. With the manhole cover(s) in place, water should be added to the tank during backfilling. The water level in the tank should coincide approximately with the backfill depth. With the tank full of water, the excavation should be brought to grade with the same approved backfill materials. Depth of backfill over the top of the tank shall not exceed 2-1/2 feet.

7.8. Polyethylene Septic Tanks.

A. Polyethylene septic tanks shall comply with the criteria for acceptance established in "Prefabricated Septic Tanks and Sewage Holding Tanks, Can3-B66-M79" by the Canadian Standards Association, 178 Rexdale Boulevard, Rexdale, Ontario, Canada M9W1R3. Required identifying marks shall comply with this rule.

B. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the Division.

C. The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the installation procedures in R317-4-7 shall apply.

7.9. Poured-In-Place Concrete Septic Tanks. The top of poured-in-place septic tanks with a liquid capacity of 750 to 1,250 gallons shall be a minimum of four inches thick, and reinforced with one 3/8-inch reinforcing rod per foot of length, or equivalent. The top of tanks with a liquid capacity of greater than 1,250 gallons up to the maximum design capacity shall be a minimum of six inches thick, and reinforced with 3/8-inch reinforcing rods eight inches on centers both ways, or equivalent. The walls and floor shall be a minimum of six inches thick. The walls shall be reinforced with 3/8-inch reinforcing rods eight inches on centers both ways, or equivalent. Inspections by the regulatory authority may be required of the tank reinforcing steel before any concrete is poured. A six-inch water stop shall be used at the wall-floor juncture to insure watertightness. All concrete used in poured-in-place tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to insure watertightness. Curing of concrete shall comply with the requirements in R317-4-7.

7.10. Identifying Marks. All prefabricated or precast septic tanks which are commercially manufactured shall be plainly, legibly, and permanently marked or stamped on the exterior at the outlet end and within six inches of the top of the wall, with the name and address or nationally registered trademark of the manufacturer and the liquid capacity of the tank in gallons. Both the inlet and outlet of all such tanks shall be plainly marked as IN or OUT, respectively.

7.11. Liquid Depth of Tanks. Liquid depth of septic tanks shall be at least 30 inches. Depth in excess of 72 inches shall not be considered in calculating liquid volume required in R317-4-7.

7.12. Tank Compartments. Septic tanks may be divided into compartments provided each meets applicable requirements stated herein as well as the following:

A. The volume of the first compartment must equal or exceed two thirds of the total required septic tank volume.

B. No compartment shall have an inside horizontal distance less than 24 inches.

C. Inlets and outlets shall be designed as specified for tanks, except that when a partition wall is used to form a multi-compartment tank, an opening in the partition may serve for flow between compartments provided the minimum dimension of the opening is four inches, the cross-sectional area is not less than that of a six -inch diameter pipe (28.3 square inches), and the mid-point is below the liquid surface a distance approximately equal to 40 percent of the liquid depth of the tank.

D. No tank shall have an excess of three compartments.

7.13. Tanks in Series. Additional septic tank capacity over 750 gallons may be obtained by joining uncompartmented tanks in series to obtain the required capacity providing the following are complied with:

A. No tank in the series shall be smaller than 750 gallons.

B. The capacity of the first tank shall be at least two thirds of the required total septic tank volume.

C. The outlet of each successive tank shall be at least 2 inches lower than the outlet of the preceding tank, and shall be unrestricted except for the inlet to the first tank and the outlet for the last tank.

D. The number of tanks in series shall not exceed three.

7.14. Inlets and Outlets. Inlets and outlets of tanks or compartments thereof shall meet the material and minimum diameter requirements for building sewers and shall be tee-ed or baffled with the object of diverting incoming flow toward the tank bottom and minimizing as much as possible the discharge of sludge or scum in the effluent. Inlet or outlet devices shall also conform with the following:

A. Inlets and outlets should be located on opposite ends of the tank. The invert of flow line of the inlet shall be located at least two inches (and preferably three inches) above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

B. An inlet baffle or sanitary tee of wide sweep design shall be provided to divert the incoming sewage downward. This baffle or tee is to penetrate at least six inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

C. For tanks with vertical sides, outlet baffles or sanitary tees shall extend below the liquid surface a distance equal to approximately 40 percent of the liquid depth. For horizontal cylindrical tanks and tanks of other shapes, that distance shall be reduced to approximately 35 percent of the liquid depth.

D. All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

E. All inlet and outlet devices shall be permanently fastened in a vertical, rigid position. Inlet and outlet pipe connections to the septic tank shall be sealed with a bonding compound that will adhere to the tank and pipes to form watertight connections, or watertight sealing rings.

F. Inlet and outlet devices shall not include any design features preventing free venting of gases generated in the tank or absorption system back through the roof vent in the building plumbing system. The top of the baffles or sanitary tees must extend at least six inches above the liquid level in order to provide scum storage, but no closer than one inch to the inside top of the tank.

G. Offset inlets may be approved by the regulatory authority where they are warranted by constraints on septic tank location.

H. Multiple outlets from septic tanks shall be prohibited.

I. A gas deflector may be added at the outlet of the tank to prevent solids from entering the outlet pipe of the tank.

7.15. Scum Storage. Scum storage volume shall consist of 15 percent or more of the required liquid capacity of the tank and shall be provided in the space between the liquid surface and the top of inlet and outlet devices.

7.16. Accessibility of Tank. Septic tanks shall be installed in a location so as to be accessible for servicing and cleaning, and shall have no structure or other obstruction placed over them so as to interfere with such operations. Tanks should be placed between the dwelling and the street whenever possible to facilitate connection to the sanitary sewer at the time such a sewer is installed.

7.17. Access to Tank Interior. Adequate access to the tank shall be provided to facilitate inspection and cleaning and shall conform to the following requirements:

A. Access to each compartment of the tank shall be provided through properly placed manhole openings not less than 18 inches, preferably 22 inches, in minimum horizontal dimension or by means of an easily removable lid section.

B. Access to inlet and outlet devices shall be provided through properly spaced openings not less than twelve (12) inches in minimum horizontal dimension or by means of an easily removable lid section.

C. The top of the tank shall be at least six inches below finished grade.

D. All manholes required by R317-4-7. shall be extended to within at least four inches of the finished grade. The manhole extensions shall be constructed of durable, structurally sound materials which are approved by the regulatory authority and designed to withstand expected physical loads and corrosive forces.

E. Access covers for manhole openings shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access openings, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

F. No septic tank shall be located under paving unless extensions to the access openings are extended up through the paving and the manholes are equipped with a locking-type cover.

7.18. Tank Cover. Septic tank covers shall be sufficiently strong to support whatever load may reasonably be expected to be imposed upon them and tight enough to prevent the entrance of surface water, dirt, or other foreign matter, and seal the odorous gases of digestion.

7.19. Tank Excavation and Backfill. The hole to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole should be excavated an additional six inches and backfilled with sand, crushed stone, or gravel to the proper grade. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.

7.20. Installation in Ground Water. If septic tanks are installed in ground water, the regulatory authority may require adequate ground anchoring devices to be installed to prevent the tank from floating when it is emptied during cleaning operations.

7.21. Maintenance Requirements. Maintenance Requirements - Adequate maintenance shall be provided for septic tanks to insure their proper function. Recommendations for the inspection and cleaning of septic tanks are provided in R317-4-13.

R317-4-8. Discharge to Absorption Systems.

8.1. General Requirements. Septic tank effluent shall be conducted to the absorption system through a watertight pipe and fittings which meet the material, diameter, and slope requirements for building sewers. Tees, wyes, ells, or other distributing devices may be used as needed. Illustrations of typical components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

8.2. Tees and Wyes. Tees and wyes shall be installed level to permit equal flow to the branches of the fitting.

8.3. Drop Boxes. On level or sloping topography, drop boxes may be used to distribute effluent within the absorption system. They are usually installed in the middle or at the head end of each trench. They shall be watertight and constructed of concrete or other durable material approved by the Division. They shall be designed to accommodate the inlet pipe, an outlet pipe leading to the next drop box (except for the last drop box), and 1 or 2 distribution pipes leading to the absorption system. Drop boxes shall meet the following requirements:

A. The inlet pipe to the drop box shall be at least one inch higher than the outlet pipe leading to the next drop box.

B. The invert of the distribution pipes(s) shall be four to six inches below the outlet invert. If there is more than one distribution pipe, their inverts shall be at exactly the same elevation. Drop boxes shall be installed level and the flow from multiple distribution lines should be checked by filling the drop box with water up to the outlets.

C. The inlet and outlet of the drop box shall be sealed watertight to the sidewalls of the drop box.

D. The drop box shall be provided with a means of access. The top of the drop box shall have a lid of compatible construction and material as the drop box, and be adequate to prevent entrance of water, dirt or other foreign material, but made removable for observation and maintenance of the system. The top of the drop box shall be at least six inches below finished grade.

E. The drop box must be installed on a level, solid foundation to insure against tilting or settling. To minimize frost action and reduce the possibility of movement once installed, drop boxes should be set on a bed of sand or pea gravel at least 12 inches thick.

F. Unused "knock-out" holes in concrete drop boxes shall be completely filled with concrete or mortar.

8.4. Distribution Boxes. Distribution boxes may be used on level or nearly level ground. They shall be watertight and constructed of concrete or other durable material approved by the Division. They shall be designed to accommodate 1 inlet pipe, the necessary distribution lines, and shall meet the same requirements as for drop boxes, except that outlet inverts of the distribution box shall be not less than 2 inches below the inlet invert. Illustrations of typical components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

8.5. Identifying Marks. Commercially manufactured drop boxes and distribution boxes shall be plainly and legibly marked on an interior wall above the level of the top of the inlet pipe with the name of the manufacturer.

R317-4-9. Absorption Systems.

9.1. General Requirements.

A. Distribution pipe for gravity-flow absorption systems shall be four inches in diameter and shall be perforated. Distribution pipe and pipe fittings shall be of approved materials capable of withstanding corrosive action by sewage and sewage-generated gases, and meeting recognized national standards for compressive strength and corrosive action such as standards published by the American Society for Testing Materials (see R317-4-6).

B. Distribution pipe for gravity-flow absorption systems shall be in straight lengths and penetrated by at least two rows of round holes, each 1/4 to 1/2-inch in diameter, and located at approximately six -inch intervals. When installed on a level or nearly level grade, the perforations should be located at about the five o'clock and seven o'clock positions on the pipe to permit nearly equal drainage along the length of pipe, and the open ends of the pipes shall be capped.

C. Absorption system laterals designed to receive equal flows of wastewater shall have approximately the same absorption area. Many different designs may be used in laying out absorption

systems, the choice depending on the size and shape of the available areas, the capacity required, and the topography of the disposal area.

D. In gravity-flow absorption systems with multiple distribution lines, the sewer pipe from the septic tank shall not be in direct line with any one of the distribution lines, except where drop boxes or distribution boxes are used.

E. Any section of distribution pipe laid with non-perforated pipe, shall not be considered in determining the required absorption area.

F. Absorption system excavations may be made by machinery provided that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil. Absorption systems shall not be excavated when the soil is wet enough to smear or compact easily. Open absorption system excavations shall be protected from surface runoff to prevent the entrance of silt and debris. If it is necessary to walk in the excavation, a temporary board laid on the bottom will prevent damage from excessive compaction. Some smearing damage is likely to occur. All smeared or compacted surfaces should be raked to a depth of one inch, and loose material removed before the filter material is placed in the absorption system excavation.

G. The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

H. The top of the stone or "gravel" filter material shall be covered with an effective, pervious, material such as an acceptable synthetic filter fabric, unbacked fiberglass building insulation, a two-inch layer of compacted straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the filter material.

I. Absorption systems shall be backfilled with earth that is free from stones ten inches or more in diameter. The first four to six inches of soil backfill should be hand-filled. Distribution pipes shall not be crushed or disaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement and prevent depressions for surface ponding of water.

J. Heavy equipment shall not be driven in or over absorption systems during construction or backfilling.

K. Distribution pipes placed under driveways or other areas subjected to heavy loads shall receive special design considerations to insure against crushing or disruption of alignment. Absorption area under driveways or pavement shall not be considered in determining the minimum required absorption area, except that deep wall trenches and seepage pits may be allowed beneath unpaved driveways on a case-by-case basis by the regulatory authority, if the top of the distribution pipe is at least three feet below the final ground surface.

L. That portion of absorption systems below the top of distribution pipes shall be in natural earth or in earth fill which meets the requirements of R317-4-5.

M. A diversion valve may be installed in the sewer line after the septic tank to allow the use of rotating absorption systems. Such duplicate systems may be allowed in lieu of replacement areas. Total onsite wastewater system requirements shall remain the same. The valve shall be accessible from the finished grade. The valve should be switched annually.

N. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

9.2. Standard Trenches. Standard trenches consisting of a series of trenches designed to distribute septic tank effluent into perforated pipe and gravel fill, from which it percolates through the trench walls and bottoms into the surrounding subsurface soil, shall conform to the following requirements:

A. The effective absorption area of standard trenches shall be considered as the total bottom area of the excavated trench system in square feet.

B. The minimum required effective absorption area for standard trenches shall be determined from Table 7 by using the results of percolation tests conducted in accordance with R317-4-5. The minimum required effective absorptive area of trenches which utilize chamber systems shall be in accordance with R317-4-9.

C. Isolation of standard trenches shall be not less than the minimum distances specified in Table 2.

D. Design and construction of standard trenches shall be as specified in Tables 8 and 9.

TABLE 7
Subsurface Absorption Systems
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater
(Based on Percolation Test Rates)(a)

Percolation Rate (time in minutes required for water to fall 1 inch)	Residential Minimum Absorption Area in Square Feet Per Bedroom (b)(c)(d)	Commercial, Institutional, etc., Maximum Rate of Application in gallons per sq. feet per day (e)(f)(g)
1-10	165	1.6
11-15	190	1.3
16-20	212	1.1
21-30	250	0.9
31-45	300	0.8
46-60(g)	330	0.6

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) Minimum absorption requirements in the residential column of Table 7 provide for normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category. In every case, sufficient absorption area shall be provided for at least 2 bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable percolation rate category. In every case a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 7 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Soil absorption systems are not permitted in areas where the soil percolation rate is slower than one inch in 60 minutes or faster than one inch in one minute.

TABLE 8
Absorption Trench Construction Details(a)

ITEM	UNIT	MINIMUM	MAXIMUM
GRAVITY EFFLUENT DISTRIBUTION PIPES:			
Number of laterals	--	2(b)	--
Length of individual laterals	feet	--	100(c)
Diameter	inches	4	--
Width of trenches	inches	12	36
Slope of distribution pipe	inches/100 ft.	(d)	4
Depth to trench bottom (from ground surface)	inches	10	(e)
Distance between trenches		(see R317-4-9, Table 9)	
Bottom of trench to maximum ground			

water table	inches	24	--
Bottom of trench to unsuitable soil or bedrock formations	inches	48	--
SIZE OF FILTER MATERIAL	inches	3/4	2-1/2
Allowable fines:			
1/2 inch mesh(a) (12.5 millimeter)	percent	0	5
#10 mesh(a) (2.0 millimeter)	percent	0	2
(a) US Standard Sieves			
DEPTH OF FILTER MATERIAL:			
Under distribution pipe	inches	6(f)	--
Over distribution pipe	inches	2	--
Total depth	inches	12	--
Under pipe located within 10 feet of trees and shrubs	inches	12	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6(g)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the total bottom area of the trenches in square feet.

(b) Of near equal length.

(c) Preferably not more than 60 feet long.

(d) Preferably level.

(e) Trenches should be constructed as shallow as is practical to allow for evapotranspiration of wastewater.

(f) Preferably 8 inches.

(g) Whenever any distribution pipes will be covered with between six and 12 inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

TABLE 9
Width and Minimum Spacing Requirements
for Absorption Trenches

Width at Bottom in Inches	Minimum Spacing of Trenches (wall to wall) in Feet
12 to 18	6.0
18 to 24	6.5
24 to 30	7.0
30 to 36	7.5

E. The stone or "gravel" fill used in absorption trenches shall consist of crushed stone, gravel, or similar material, ranging from 3/4 to 2 1/2 inches in diameter. It shall be free from fines, dust, sand, or organic material and shall be durable, and resistant to slaking and dissolution. The maximum fines in the gravel shall be two percent by weight passing through a US Standard #10 mesh (two millimeter) sieve. It shall extend the full width of the trench, shall be not less than six inches deep beneath the bottom of the distribution pipes, and shall completely encase and extend at least 2 inches above the top of the distribution pipe.

F. The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

G. In locations where the slope of the ground over the absorption system area is relatively flat, the trenches should be interconnected to produce a closed-loop or continuous system and the distribution pipes should be level.

H. In locations where the ground over the absorption system area slopes greater than six inches in any direction within field area, a system of serial distribution trenches may be used which will follow approximately the ground surface contours so that variation in trench depth will be minimized. The trenches should be installed at different elevations, but the bottom of each individual trench should be level throughout its length.

I. Serial trenches shall be connected with a drop box (R317-4-8)or watertight overflow line (R317-4-9) in such a manner that a trench will be filled with wastewater to the depth of the gravel fill before the wastewater flows to the next lower trench.

J. The overflow line between serial trenches shall be a four-inch watertight pipe with direct connections to distribution pipes. It should be laid in a trench excavated to the exact depth required. Care must be exercised to insure a block of undisturbed earth between trenches. Backfill should be carefully tamped. Inlets should be placed as far as practical from overflows in the same trench.

9.3. Shallow Trenches with Capping Fill. Shallow trenches with capping fill are trenches which meet the requirements of standard trenches except for depth of installation. Shallow trenches with capping fill may be installed to a minimum depth of 10 inches from the natural existing grade to the bottom of the trench. The top of the distribution pipe shall not be installed above the natural existing grade. The gravel fill above the pipe, the filter media barrier, and the soil fill are installed as a "cap" to the trench above grade. Fill shall be installed between trenches to prevent surface ponding and to provide a level finished grade.

9.4. Chambered Trench Systems.

A. At the option of the local health department, chamber system media may be used in lieu of the gravel fill and perforated distribution pipe in absorption trenches if the installation is in conformance with manufacturer recommendations, as modified by these rules.

B. No cracked, weakened or otherwise damaged chamber units shall be used in any installation.

C. All chambers shall be manufactured of an approved material and shall be certified to withstand the AASHTO H-10-44 highway structural rating without damage or permanent deformation.

1. Type A Chamber Media:

a. Type A Chamber Media shall be of an approved design with a minimum width at the bottom of 30 inches (76 cm) and a minimum louvered sidewall opening height of six inches (15 cm).

b. Type A chamber media may be installed in standard trenches, shallow trenches with capping fill, at-grade trenches, and earth-fill trenches.

c. Type A chamber media shall be installed in trenches with a minimum excavation width of 36 inches (91 cm).

d. The minimum total length of Type A chamber media installed shall be equal or greater than the minimum length of a 36 inch wide gravel media trench as required by these rules.

2. Type B Chamber Media:

a. Type B Chamber Media shall be of an approved design with a minimum open bottom width of 18 inches (46 cm) and a minimum louvered sidewall opening height of 9-3/8 inches (24 cm).

b. The local health department shall provide written notification to the owner that they are using technology which has less experience than the conventional gravel filled trench. The potential liabilities of the system shall be clearly explained, including the responsibility a homeowner has to replace a failing wastewater system.

c. Type B chamber media may only be installed in standard trenches and shallow trenches with capping fill. Type B chambers may not be installed in conjunction with any other absorption system configuration, including alternative and experimental systems.

d. Type B chamber media shall be installed in trenches with a minimum excavation width of 24 inches (61 cm).

e. The bottom of the Type B chamber media and trench excavation shall be a minimum of 9-3/8 inches below the bottom invert of the effluent inlet pipe to the trench.

f. The minimum total length of Type B chamber media installed shall be equal or greater than the minimum length of a 36 inch (91 cm) wide gravel media trench as required by these rules.

9.5. Deep Wall Trenches.

A. Deep wall trenches may be constructed in lieu of other approved absorption systems or as a supplement to an absorption

trench where soil conditions and the required separation from the maximum ground water table comply with Table 11 of this section. This absorption system consists of deep trenches filled with clean, coarse filter material which receive septic tank effluent and allow it to seep through sidewalls into the adjacent porous subsurface soil. They shall conform to the following requirements:

1. The effective absorption areas shall be considered as the outside surface of the deep wall trench (vertical sidewall area) calculated below the inlet or distributing pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious strata or bedrock formations shall not be considered in determining the effective sidewall absorption area. Each deep wall trench shall have a minimum sidewall absorption depth of 2 feet of suitable soil formation.

2. The minimum required sidewall absorption area shall be determined by either of the following 2 methods:

a. For the purpose of estimating the percolation test rate of each deep wall trench system, a signed " Deep Wall Trench Certificate" or equivalent shall be submitted as evidence that a proper percolation test has been performed under the supervision of a licensed environmental health scientist, registered engineer, or other qualified person certified by the regulatory authority. The deep wall trench certificate or equivalent must contain the following:

i. the name and address of the individual constructing the deep wall trench;

ii. the location of the property;

iii. the dimensions of the trench;

iv. total effective absorption depth;

v. a description of the texture, character, and thickness of each stratum of soil encountered in the deep wall trench construction;

vi. a signed statement certifying that the deep wall trench has been constructed in accordance with the requirements of this rule. The required absorption area shall then be determined in accordance with Table 10.

b. Percolation tests conducted in accordance with R317-4-5 shall be made in each soil horizon penetrated by the deep wall trench below the inlet pipe, and test results within the acceptable range specified in R317-4-5 shall be used in calculating the required sidewall absorption area in accordance with Table 7.

TABLE 10
Deep Wall Trench
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater (a)
(Based on Soil Descriptions According to the
United States Department of Agriculture (USDA)
Soil Classification System)

Character of Soil by USDA Soil Classification System	Residential Sq. Ft. of Sidewall Area Required Per Bedroom (b)(c)(d)	Commercial, Institutional, etc. Maximum Rate of Application in Gallons Per Sq. Ft. Sidewall Per Day (e)(f)
Hardpan or bedrock (including fractured bedrock with little or no fines).	(g)	(g)
Sand Well graded gravels, gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
Sand Poorly graded gravels or gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
Loamy Sand Well graded sands, gravelly sand, little or no fines.	195	1.20
Loamy Sand Poorly graded sands or gravelly sands, little or no fines.	195	1.20
Loam Silty sand, sand-silt mixtures.	295	0.8
Sandy Loam Silty gravels, poorly graded gravel-sand-silt mixtures.	235	1.0
Silty Loam Clayey gravels, gravel-sand-clay mixtures.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Clayey sands, sand-clay mixtures.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Inorganic silts and very fine sands, rock flour, silty or clayey fine sands or clayey silts with slight plasticity.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	520 (h)(i)	0.45 (h)(i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	520 (h)(i)	0.45 (h)(i)
Clay Loam, Clay Inorganic clays of high plasticity, fat clays.	(g)	(g)
Clay Loam, Clay Organic silts and organic silty clays of low plasticity.	(g)	(g)
Clay Loam, Clay Organic clays of medium to high plasticity, organic silts.	(g)	(g)
Clay Loam, Clay Peat and other highly organic silts.	(g)	(g)

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) Minimum absorption requirements in the residential column of Table 10 provide for normal household applications, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedroom times the required absorption area within the applicable soils description category. In every case, sufficient absorption area shall be provided for at least two bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable soils description category. In every case, a minimum of 150 sq. ft. of sidewall absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 5 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Unsuitable for absorption area.

(h) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and

gravels in fine-grained soils.

(i) For the purposes of this table, whenever there are reasonable doubts regarding the suitability and estimated absorption capacities of soils, percolation tests shall be conducted in those soils in accordance with R317-4-5. Soils within the same classification may exhibit extreme variability in permeability, depending on the amount and type of clay and silt present. The following soil categories, Clay loam and Clay soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

3. Isolation of deep wall trenches shall be not less than the minimum distances specified in Table 2.

4. Design and construction of deep wall trenches shall be as specified in Table 11.

5. The bottom of the deep wall trench shall terminate at least two feet above the maximum ground water table in the disposal area. Suitable soil conditions must be verified to a depth of four feet below the bottom of the proposed deep wall trench.

6. All deep wall trenches shall be filled with coarse stone that ranges from 3/4 to twelve inches in diameter and is free from fines, sand, clay, or organic material.

7. The distribution pipe shall be centered in the deep wall trench and placed the entire length of the trench. A thin layer of crushed rock or gravel ranging from 3/4 to 2 1/2 inches in diameter and free from fines, sand, clay or organic material, shall cover the coarse stone to permit leveling of the distribution pipe. The maximum fines in the gravel used above the stone shall be two percent by weight passing through a US Standard #10 mesh (2.0 millimeter) sieve. The crushed rock or gravel shall completely fill the trench to a minimum depth of two inches over the distribution pipe and shall be properly covered in accordance with R317-4-9 to prevent infiltration of backfill. A minimum of six inches of backfill shall cover the crushed rock or gravel over the distribution pipe.

TABLE 11
Deep Wall Trench Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
DEEP WALL TRENCHES:			
Width	feet	2	--
Length	feet	--	100 (b)
EFFECTIVE VERTICAL SIDEWALL ABSORPTION DEPTH (per trench)	feet	2	--
EFFLUENT DISTRIBUTION PIPES:			
Diameter	inches	4	--
Slope	inches/100 ft. (c)		4
BOTTOM OF TRENCH TO MAXIMUM GROUND WATER TABLE	inches	24	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	inches	48	--
DISTANCE BETWEEN DEEP WALL TRENCHES	(See Table 2)		
SIZE OF FILTER MATERIAL	inches	3/4	12
DEPTH OF FILTER MATERIAL:			
Under pipe	feet	2 (d)	--
Over pipe	inches	2	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6 (e)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the outside surface of the deep wall trench (vertical sidewall area) calculated below the distribution pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious sidewall strata shall not be considered in determining the effective absorption area.

(b) Preferably not more than 60 feet long.

(c) Preferably level.

(d) For a deep wall trench, the entire trench shall be completely filled with aggregate filter material to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

(e) Whenever any distribution pipes will be covered with between six and twelve inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

8. If multiple deep wall trenches are installed in areas where the slope of the ground is relatively flat, the trenches and distribution pipes should be interconnected to produce a continuous system and the distribution pipe and trench bottoms should be level.

9. In locations where the ground over the deep wall trench area slopes, a single trench system should follow the contours of the land. If multiple trenches are necessary on sloping land, a system of serial deep wall trenches should be used, with each trench installed at a different elevation. The bottom of each trench should be level throughout its length.

10. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

9.6. Seepage Pits. Seepage pits shall be considered as modified deep wall trenches and may be constructed in lieu of other approved absorption systems or as a supplement to an absorption trench where soil conditions and the required separation from the maximum ground water table comply with R317-4-5. This absorption system consists of one or more deep pits, either (1) hollow-lined, or (2) filled with clean, coarse filter material, which receive septic tank effluent and allow it to seep through sidewalls into the adjacent porous subsurface soil. They shall conform to the general requirements for deep wall trenches, except for the following:

A. The effective absorption area for seepage pits shall be determined as for deep wall trenches in R317-4-9, except that each seepage pit shall have a minimum effective sidewall absorption depth of four feet of suitable soil formation.

B. The minimum required sidewall absorption area shall be determined as for deep wall trenches in R317-4-9.

C. Design and construction of seepage pits shall be as specified in Table 12.

TABLE 12
Seepage Pits Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
GENERAL:			
Diameter of pit	feet	3	--
Effective vertical sidewall absorption depth (per pit)	feet	4	--
Distance between seepage pits	(See Table 2)		
Diameter of distribution pipe	inches	4	--
Size of filter material	inches	3/4	12
HOLLOW-LINED PITS:			
Width of annular space between lining and sidewall containing crushed rock (3/4 to 2-1/2 inches in diameter)	inches	6 (b)	--
Thickness of reinforced perforated concrete lining	inches	2-1/2	--
Thickness of brick, or block linings	inches	4	--
Depth of filter material in pit bottom	inches	6	--
Horizontal dimension of manhole in cover	inches	18	--
FILLED SEEPAGE PITS:			
Depth of filter material:			

Under distribution pipe	feet	4 (c)	--
Over distribution pipe	inches	2	--
Thickness of compacted straw barrier over aggregate filter material	inches	2	--
Depth of backfill over barrier covering filter material	inches	6 (d)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the outside surface of the seepage pit (vertical sidewall area) calculated below the inlet or distribution pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious sidewall strata shall not be considered in determining the effective absorption area.

(b) Preferably twelve inches.

(c) For a filled seepage pit, the entire pit shall be completely filled with aggregate filter material to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

(d) Whenever any distribution pipes will be covered with between six and 12 inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

D. All seepage pits shall have a diameter of at least three feet.

E. Structural materials used throughout shall assure a durable, safe structure.

F. All seepage pits shall be either (1) hollow and lined with an acceptable material, or (2) filled with coarse stone or similar material that ranges from 3/4 to 12 inches in diameter and is free from fines, sand, clay, or organic material. Pits filled with coarse stone are preferred over hollow-lined pits. Linings of brick, stone, block, or similar materials shall have a minimum thickness of four inches and shall be laid with overlapping, tight-butted joints. Below the inlet level, mortar shall be used in the horizontal joints only. Above the inlet, all joints shall be fully mortared.

G. For hollow-lined pits, the inlet pipe should extend horizontally at least 1 foot into the pit with a tee to divert flow downward and prevent washing and eroding the sidewall. A minimum annular space of six inches between the lining and excavation wall shall be filled with crushed rock or gravel varying in diameter from 3/4 to 2-1/2 inches and free from fines, sand, clay, or organic material. The maximum fines in the gravel shall be 2 percent by weight passing through a US Standard #10 mesh (2.0 millimeter) sieve. Clean coarse gravel or rock at least six inches deep shall be placed in the bottom of each pit.

H. A structurally sound and otherwise suitable top shall be provided that will prevent entrance of surface water, dirt, or other foreign material, and be capable of supporting the overburden of earth and any reasonable load to which it is subjected. Access to each hollow-lined pit shall be provided by means of a manhole, not less than 18 inches in minimum horizontal dimension, or by means of an easily removable cover and shall otherwise comply with R317-4-7. The top of the pit shall be covered with a minimum of six inches of backfill.

I. In pits filled with coarse stone, the perforated distribution pipe shall run across each pit. A layer of crushed rock or gravel shall be used for leveling the distribution pipe as specified in R317-4-9.

9.7. Absorption Beds. Absorption beds consist of large excavated areas, usually rectangular, provided with "gravel" filter material in which 2 or more distribution pipe lines are laid. They may be used in lieu of other approved absorption systems where conditions justify their use and shall conform to the requirements applying to absorption trenches, except for the following:

A. The effective absorption area of absorption beds shall be considered as the total bottom area of the excavation.

B. The minimum required absorption area for absorption beds shall be determined from Table 13 by using the results of percolation tests conducted in accordance with R317-4-5.

TABLE 13
Absorption Bed
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater
(Based on Percolation Test Rates) (a) (b)

Percolation Rate (time in minutes required for water to fall 1 inch)	Residential Minimum Absorption Area in Square Feet Per Bedroom (c)(d)	Commercial, Institutional, etc., Maximum Rate of Application in gallons per square foot per day (e)(f)
1-10 (g)	330	0.80
11-15	380	0.65
16-20	424	0.55
21-30 (g)	500	0.45

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) This table provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category. In every case, sufficient absorption area shall be provided for at least two bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable percolation rate category. In every case, a minimum of 300 square feet of absorption bed bottom absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 7 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Absorption beds are not permitted in areas where the soil percolation rate is slower than one inch in 30 minutes or faster than one inch in one minute.

C. Isolation of absorption beds shall be not less than the minimum distances specified in Table 2.

D. Design and construction of absorption beds shall be as specified in Table 14.

TABLE 14
Absorption Bed Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
EFFLUENT DISTRIBUTION PIPES:			
Diameter	inches	4	--
Length	feet	--	100 (b)
Number of lines	--	2 (c)	--
Slope	inches/100 ft.	(d)	4
Depth of absorption bed (from ground surface)	inches	12	(e)
DISTANCE BETWEEN MULTIPLE LINES (c to c)	feet	--	6
DISTANCE BETWEEN DISTRIBUTION LINES AND SIDEWALLS (edge to edge)	feet	1	3
DISTANCE BETWEEN ABSORPTION BEDS	(See Table 2)		
BOTTOM OF BED TO MAXIMUM GROUND WATER TABLE	feet	2	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	feet	4	--
SIZE OF FILTER MATERIAL	inches	3/4	2-1/2
Allowable fines: 1/2 inch mesh(a)	percent	0	5

(12.5 millimeter)			
#10 mesh(a)	percent	0	2
(2.0 millimeter)			
(a) US Standard Sieves			
DEPTH OF FILTER MATERIAL:			
Under pipe	inches	6 (f)	--
Over pipe	inches	2	--
Total	inches	12	--
Under pipe located within 10 feet of trees or shrubs	inches	12	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6 (g)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the total bottom area of the excavation in square feet.

(b) Preferably not more than 60 feet long.

(c) Of near equal length.

(d) Preferably level.

(e) Absorption beds should be constructed as shallow as is practical to allow for evapotranspiration of wastewater.

(f) Preferably eight inches.

(g) Whenever any distribution pipes will be covered with between six and twelve inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

E. Absorption beds should be installed where the slope of the ground surface is relatively level, sloping no more than about six inches from the highest to the lowest point in the installation area. The bottom of the entire absorption bed shall be essentially level, at the same elevation, and the distribution pipes shall be interconnected to produce a continuous system.

R317-4-10. Experimental Onsite Wastewater Systems.

10.1. Administrative Requirements.

A. Where unusual conditions exist, experimental methods of onsite wastewater treatment and disposal may be employed provided they are acceptable to the Division and to the local health department having jurisdiction.

B. When considering proposals for experimental onsite wastewater systems, the Division shall not be restricted by this rule provided that:

1. The experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experiment.

2. The proposal for an experimental onsite wastewater system must be in the name of and bear the signature of the person who will own the system.

3. The person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experiment.

C. When sufficient, successful experience is established with experimental onsite wastewater systems, the Division may designate them as approved alternative onsite wastewater systems. Following this approval of alternative onsite wastewater systems, the Division will adopt rules governing their use.

10.2. General Requirements.

A. All experimental systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as shown in R317-4-5.

2. The local health department must advise the owner of the system of the experimental status of that type of system. The advisory must contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements which are all specific to the type of system to be installed.

3. The local health department and the homeowner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the Division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations must be approved by the local health department.

B. When an experimental wastewater system exists on a property, notification of the existence of that system shall be recorded on the deed of ownership for that property.

R317-4-11. Alternative Onsite Wastewater Systems.

11.1. Administrative Requirements. The local health department having jurisdiction must obtain approval from the division to administer an alternative onsite wastewater system program, as outlined in this section, prior to permitting alternative onsite wastewater systems. Alternative onsite wastewater systems are only to be installed where site limitations prevent the use of conventional onsite wastewater systems.

A. The following alternative onsite wastewater systems may be considered for use upon the executive secretary's approval of a written request from the local health department to administer an alternative onsite wastewater system program.

TABLE 15

System	Rule Reference
Earth fill Systems	R317-4-11.2
"At-Grade" Systems	R317-4-11.3
Mound Systems	R317-4-11.4

The local health department request for approval must include a description of their plan to properly manage these systems to protect public health and water quality. This plan must include:

1. Documentation of the adequacy of staff resources to manage the increased work load.

2. Documentation of the technical capability to administer the new systems including any training plans which are needed.

3. A description of measures to be taken by the local health department to insure that designers and installers of these systems are qualified.

4. A description of the methods which will be used to determine the maximum anticipated high ground water table elevation.

5. Documentation that the Local Board of Health and County Commission support this request.

6. A description of how these systems will be managed, inspected and monitored.

7. A ground water management plan which identifies maximum septic system densities to be allowed in order to prevent unacceptable degradation of ground water, or a schedule for completing an acceptable plan within one year. This requirement may be waived or modified by the executive secretary where it can be shown that these systems would be relatively few in number and widely separated, thereby having negligible impact on ground water quality, or where the ground water aquifers vary greatly over relatively short distances making such a ground water study impractical.

8. Documentation of the county's legal authority to implement and enforce correction of malfunctioning systems and their commitment to exercise this authority.

B. All alternative onsite wastewater systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as shown in R317-4-5.

2. The local health department must advise the owner of the system of the alternative status of that type of system. The advisory must contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements which are all specific to the type of system to be installed.

3. The local health department and the homeowner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the Division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations must be approved by the local health department.

C. When an alternative onsite wastewater system exists on a property, notification of the existence of that system shall be recorded on the deed of ownership for that property.

11.2. Installation in Earth Fill.

A. Installation of absorption systems in earth fill will be allowed only by the regulatory authority having jurisdiction in accordance with these rules. Installation of absorption systems in earth fill is an alternative disposal method. Conditions for use of alternative onsite wastewater systems are shown in R317-4-11.

B. Absorption trenches and absorption bed type systems may be placed in earth fill. Absorption trench systems placed in earth fill can only be installed over natural soils with a percolation rate range between five and 60 minutes per inch; and absorption bed systems over soils with a percolation rate range of five to 30 minutes per inch.

C. Naturally existing soil with an unacceptable percolation rate may be removed and replaced with earth fill with an acceptable, in-place percolation rate, if the removal of the original soil does not cause other unacceptable site conditions and if acceptable natural soil exists below the replacement. The site must conform to all other acceptability conditions.

D. The maximum acceptable existing slope of a site upon which an "at grade" or "above grade" onsite system can be placed with the use of earth fill is four percent.

E. The minimum area of fill to be placed shall be sufficient to install a system sized for the number of bedrooms in the home, using the percolation rate of 60 minutes per inch. The fill area shall be sized to accommodate an absorption system for a home with a minimum of three bedrooms, and shall include all required clearances within, and outside of the fill and absorption system area.

F. The area of original fill placement shall include that area required for a 100 percent replacement of the drainfield, with all required clearances. The area between trenches shall not be used for replacement area.

G. The fill depth below the bottom of the absorption system shall not exceed six feet.

H. The minimum separation between the natural ground surface and the anticipated maximum ground water table or saturated soil shall be twelve (12) inches.

I. The earth fill shall be considered to be acceptably stabilized if it is allowed to naturally settle for a minimum period of one year, sized to result in its minimum required dimensions after the settling period. Mechanical compaction shall not be allowed.

J. All onsite wastewater systems placed in earth fill shall conform to all other applicable requirements of R317-4, "Onsite Wastewater Systems".

K. The onsite wastewater system and local area surrounding them shall be graded to drain surface water away from the absorption system.

L. After the fill has settled for a minimum of one year, a minimum of two (2) percolation tests/soil exploration tests shall be conducted in the fill. One shall be conducted in the proposed absorption system area and one in the proposed replacement area of the fill. The suitably stabilized fill shall have an in-place percolation rate of between 15 and 45 minutes per inch.

M. The maximum exposed side slope for fill surfaces shall be four horizontal to one vertical. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the wastewater system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal area perimeter below, before the beginning of the side slope. A suitable soil cap, which will support a vegetative cover, shall cover the entire fill body. The cap shall be provided with a vegetative cover. Access to the fill site shall be restricted to minimize erosion and other physical damage.

11.3. "At-Grade" Systems.

A. Where site conditions may restrict the installation of a standard absorption system, an "at-grade" system may be used. It shall be designed, installed, operated and monitored in accordance with these rules. An "at-grade" system is considered to be an alternative disposal method. Conditions for use of alternative wastewater systems are shown in R317-4-11.

B. Absorption trenches and absorption bed type absorption systems may be placed in the "at-grade" position. Absorption systems placed "at-grade" can only be installed over natural soils with a percolation rate range between five and 60 minutes per inch; and absorption bed systems over soils with a percolation rate range of five to 30 minutes per inch.

C. The minimum distance from the top of finished grade to the high seasonal ground water table or perched ground water table shall be four feet.

D. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the wastewater system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal area perimeter below, before the beginning of the side slope.

E. The maximum side slope for above ground fill shall be four (horizontal) : one (Vertical).

F. Maximum acceptable slope of original site surface for placement of an "at-grade" system is four percent.

G. The site shall be cleared of vegetation and scarified to an approximate depth of six inches. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

11.4. Mound Systems.

A. Where site conditions may restrict the use of a standard absorption system, a mound system may be used. It shall be designed, installed, operated and monitored in accordance with these rules. A mound system is considered to be an alternative disposal method. Conditions for use of alternative wastewater systems are shown in R317-4-11.1.

B. The minimum separation between the natural ground surface and the anticipated maximum ground water table or saturated soil shall be twelve (12) inches.

C. The two foot minimum thick unsaturated soil treatment horizon below the bottom of the absorption system shall consist of a minimum of one foot of suitable natural soil.

D. Mound systems shall not be located on sites where the original prevailing surface grade exceeds four percent.

E. All mound type onsite systems shall utilize pressurized systems for distribution of effluent in the absorption system.

F. The local health department in whose jurisdiction the mounds with pressurized systems are to be used, shall have an approved maintenance program in place.

G. The design effluent loading rate through the absorption system bottom to sand fill interface shall be 0.8 gallons per day per

square foot of absorption system bottom area.

H. The effluent loading rate at the sand fill to native soil interface shall as specified in Table 16:

TABLE 16

Effluent Loading Rate from Sand Fill to the Natural Soil Surface

PERCOLATION RATE OF NATURAL SOIL (Minutes per inch)	UNIT	LOADING RATE
1-10	gallons per day per square foot	0.45
11-15	gallons per day per square foot	0.40
16-20	gallons per day per square foot	0.35
21-30	gallons per day per square foot	0.30
31-45	gallons per day per square foot	0.25
46-60	gallons per day per square foot	0.20

I. The minimum thickness of aggregate media around the distribution pipes of the absorption system shall be the sum of six inches below the distribution pipe, the diameter of the distribution pipe and two inches above the distribution pipe or ten inches, whichever is larger.

J. Mound systems shall be designed in accordance with "Mound Soil Absorption System Siting, Design and Construction Guidance Manual, April 1, 1996", which is hereby incorporated by reference. A copy is available for public review from the Division of Water Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, UT, 84114-4870.

11.5. Supplemental Requirements for Maintenance and Monitoring of "At-Grade" and Earth Fill Alternative Onsite Wastewater Systems.

A. These requirements are to be applied in addition to the requirements specified in R317-4-13 where applicable.

B. These systems shall be monitored at a period of six months and one year after initial use of the system and annually thereafter for a total of five years. Repairs shall be made at any time to a malfunctioning system, as soon as possible after the malfunction is discovered.

C. The local health department in whose jurisdiction the alternative system is installed shall be responsible for formulation of, administration and supervision of a maintenance and monitoring program that is approved by the Division.

11.6. Supplemental Requirements for Maintenance and Monitoring of Pressure Distribution Alternative Onsite Wastewater Systems.

A. These requirements are to be applied in addition to the requirements specified R317-4-13, where applicable.

B. These systems shall be monitored every six months throughout the life of the system. Repairs shall be made at any time to a malfunctioning system, as soon as possible after the malfunction is discovered.

C. The local health department in whose jurisdiction the pressurized system is installed shall be responsible for formulation of, administration and supervision of a maintenance and monitoring program that is approved by the Division.

D. Additional requirements for maintenance of these systems are contained in "Mound Soil Absorption System Siting, Design and Construction Guidance Manual, April 1, 1996", which is hereby incorporated by reference. A copy is available for public review from the Division of Water Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, UT, 84114-4870.

R317-4-12. Design, Installation, and Maintenance of Sewage Holding Tanks.

12.1. Sewage Holding Tanks - Administrative Requirements.

A. Sewage holding tanks are permitted only under the following conditions:

1. Where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable.

2. As a temporary (not to exceed one year) wastewater system for a new dwelling until a connection is made to an approved sewage collection system.

3. For other essential and unusual situations where both the Division and the local health department having jurisdiction concur that the proposed holding tank will be designed, installed and maintained in a manner which provides long-term protection of the waters of the state. Requests for the use of sewage holding tanks in this instance must receive the written approval of both agencies prior to the installation of such devices.

4. Requests for the use of sewage holding tanks under subparagraphs A and B above must receive the written approval of the local health department prior to the installation of such devices.

B. Except on those lots recorded and approved for sewage holding tanks prior to May 21, 1984, sewage holding tanks are not permitted for use in new housing subdivisions, or commercial, institutional, and recreational developments except in those instances where these devices are part of a specific watershed protection program acceptable to the Division and the local health department having jurisdiction.

C. The design, installation, and maintenance of all sewage holding tanks, except those for recreational and liquid waste pumper vehicles, must comply with the following:

12.2. General Requirements.

A. No sewage holding tank shall be installed and used unless plans and specifications covering its design and construction have been submitted to and approved by the appropriate regulatory authority.

B. A statement must be submitted by the owner indicating that in the event his sewage holding tank is approved, he will enter into a contract with an acceptable liquid waste pumping company, or make other arrangements meeting the approval of the regulatory authority having jurisdiction, that the tank will be pumped periodically, at regular intervals or as needed, and that the wastewater contents will be disposed of in a manner and at a facility meeting approval of those regulatory authorities.

C. If authorization is necessary for disposal of sewage at certain facilities, evidence of such authorization must be submitted for review.

12.3. Basic Plan Information Required. Plan information for each sewage holding tank, except those in recreational and liquid waste pumper vehicles, shall comply with the following criteria:

A. Location or complete address of dwelling to be served by sewage holding tank and the name, current address, and telephone number of the person who will own the proposed sewage holding tank.

B. A plot or site plan showing:

1. direction of north,
2. number of bedrooms,
3. location and liquid capacity of sewage holding tank,
4. source and location of domestic water supply,
5. location of water service line and building sewer, and
6. location of streams, ditches, watercourses, ponds, etc., near property.

C. Plan detail of sewage holding tank and high sewage level warning device.

D. Relative elevations of:

1. building floor drain,
2. building sewer,
3. invert of inlet for tank,
4. lowest plumbing fixture or drain in building served, and
5. the maximum liquid level of the tank.

E. Statement indicating the present and maximum anticipated ground water table.

F. Liquid waste pumping arrangements for sewage holding

tank.

12.4. Construction.

A. The tank shall be constructed of sound and durable material not subject to excessive corrosion and decay and designed to withstand hydrostatic and external loads. All sewage holding tanks shall comply with the manufacturing materials and construction requirements specified for septic tanks.

B. Construction of the tank shall be such as to assure water tightness and to prevent the entrance of rainwater, surface drainage or ground water. All prefabricated or precast sewage holding tanks which are commercially manufactured shall be plainly, legibly, and permanently marked or stamped on the exterior at the inlet end and within six inches of the top of the wall, with the name and address or nationally registered trademark of the manufacturer and the liquid capacity of the tank in gallons.

C. Tanks shall be provided with a maintenance access manhole at the ground surface or above and of at least 18 inches in diameter. Access covers shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access opening, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

D. A high water warning device shall be installed on each tank to indicate when it is within 75 percent of being full. This device shall be either an audible or a visual alarm. If the latter, it shall be conspicuously mounted. All wiring and mechanical parts of such devices shall be corrosion resistant and all conduit passage ways through the tank top or walls shall be water and vapor tight.

E. No overflow, vent, or other opening shall be provided in the tank other than those described above.

F. The regulatory authority may require that sewage holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

G. The slope of the building sewer shall comply with R317-4-6.

12.5. Capacity. Each tank shall be large enough to hold a minimum of seven days sewage flow or 1,000 gallons, whichever is larger. The liquid capacity of the sewage holding tank should be based on sewage flows for the type of dwelling or facility being served (Table 3) and on the desired time period between each pumping. The length of time between pumpings may be increased by careful water management, low volume plumbing fixtures, etc.

12.6. Location. Sewage holding tanks must be located:

A. In an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use.

B. In accordance with the requirements for septic tanks as specified in Table 2.

C. Where it will not tend to float out of the ground due to a high ground water table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the ground water table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.

12.7. Operation and Maintenance.

A. Sewage holding tanks shall be pumped periodically, at regular intervals or as needed, and the wastewater contents shall be disposed of in a manner and at a facility meeting the approval of the appropriate regulatory authority.

B. Sewage holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.

C. A record of pumping dates, amounts pumped, and ultimate disposal sites should be maintained by the owner and made available to the appropriate regulatory authorities upon request.

D. Sewage holding tanks shall be checked at frequent intervals by the owner or occupant and if leakage is detected it shall be immediately reported to the local health authority. Repairs or replacements shall be conducted under the direction of the local health authority. Major increases in the time of pumpings without significant changes in water usage could indicate leakage of the tanks.

E. Improper location, construction, operation, or maintenance of a particular holding tank may result in appropriate legal action against the owner by the regulatory authority having jurisdiction.

R317-4-13. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

13.1. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

A. Septic tanks must be cleaned before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

B. A septic tank which receives normal loading should be inspected at yearly intervals to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require cleaning every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be cleaned. Experience for a particular system may indicate the desirability of longer or shorter intervals between inspections. Scum and sludge accumulations can be measured as follows:

1. Scum can be measured with a long stick to which a weighted flap has been hinged, or any device that can be used to determine the bottom of the scum mat. The stick is forced through the mat, the hinged flap falls into a horizontal position, and the stick is lifted until resistance from the bottom of the scum is felt. With the same tool, the distance to the bottom of the outlet device (baffle or tee) can be found.

2. Sludge can be measured with a long stick wrapped with rough, white toweling and lowered into the bottom of the tank. The stick should be small enough in diameter so it can be lowered through the outlet device (baffle or tee) to avoid scum particles. After several minutes, if the stick is carefully removed, the height to which the solids (sludge) have built up can be distinguished by black particles clinging to the toweling.

C. The tank should be pumped out if either the bottom of the floating scum mat is within three inches of the bottom of the outlet device (baffle or tee) or the sludge level has built up to approximately 12 inches from the bottom of the outlet device (baffle or tee). Little long-term benefit is derived by pumping out only the liquid waste in septic tanks. All three wastewater components, scum, sludge, and liquid waste should be removed. Tanks should not be washed or disinfected after pumping. A small amount of sludge should be left in the tank for seeding purposes.

D. If multiple tanks or tanks with multiple compartments are provided, care should be taken to insure that each tank or compartment is inspected and cleaned. Hollow-lined seepage pits may require cleaning on some occasions.

E. Professional septic tank cleaners, with tank trucks and pumping equipment, are located in most large communities and can be hired to perform cleaning service. In any case, the septic tank wastes contain disease causing organisms and must be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with State rules.

F. The digestion of sewage solids gives off explosive, asphyxiating gases. Therefore, extreme caution should be observed if entering a tank for cleaning, inspection, or maintenance. Forced ventilation or oxygen masks and a safety harness should be used.

G. Immediate replacement of broken-off inlet or outlet fittings in the septic tank is essential for effective operation of the system. On occasion, paper and solids become compacted in the vertical leg of an inlet sanitary tee. Corrective measures include providing a nonplugging sanitary tee of wide sweep design or a baffle.

H. Following septic tank cleaning, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light. Distribution boxes, if provided, should be inspected and cleaned when the septic tank is cleaned.

I. A written record of all cleaning and maintenance to the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants or other chemicals; therefore, use of these materials is not recommended.

K. Waste brine from household water softening units, soaps, detergents, bleaches, drain cleaners, and other similar materials, as normally used in a home or small commercial establishment, will have no appreciable adverse effect on the system. If the septic tank is adequately sized as herein required, the dilution factor available will be sufficient to overcome any harmful effects that might otherwise occur. The advice of your local health department and other responsible officials should be sought before chemicals arising from a hobby or home industry are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks which can add substantial amounts of water to the system. Industrial wastes, and other liquids that may adversely affect the operation of the onsite wastewater disposal system should not be discharged into such a system. Paper towels, facial tissue, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

M. Crushed, broken, or plugged distribution pipes should be replaced immediately.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
January 30, 2003 19-5-104
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R380. Health, Administration.
R380-40. Local Health Department Minimum Performance Standards.
R380-40-1. Authority.

This rule is promulgated as required by Section 26A-1-106(1)(c). The minimum performance standards apply to all local health department services, regardless of funding sources.

R380-40-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Local health department" means a city/county or district health department.

(3) "General performance standards" means the minimum duties performed by local health departments for public health administration, personal health, environmental health, laboratory services, and health resources in addition to the powers and duties listed in Section 26A-1-114 and is equivalent to the phrase "minimum performance standards" in Section 26A-1-116(1)(c).

(4) "Specific level of performance" means the measurable level of each general performance standard.

R380-40-3. Negotiation.

The local health department and the department shall jointly negotiate specific measurable levels of performance, not inconsistent with corresponding general performance standards, and record them in a negotiated standards document. The department and the local health department shall take into account in the negotiation process availability of local technical and financial resources, availability of department technical and financial assistance, and past practices between the department and local health departments in providing the programs under consideration.

R380-40-4. Compliance.

The local health department and the department shall monitor compliance with general performance standards and specific levels of performance.

R380-40-5. Corrective Action.

If the department finds that a local health department is out of compliance with general performance standards and specific levels of performance then the local health department shall submit a plan of corrective action to the department that is satisfactory to the department. The corrective action plan shall include but not be limited to: local health department name; the specific program under consideration; the general performance standard(s) and specific levels of performance in question; date of report; corrective actions; responsible individual; date of plan implementation.

R380-40-6. General Performance Standards For Local Health Department Administration.

(1) Local health departments shall exercise the powers and duties as outlined in Section 26A-1-114.

(2) The local board of health shall:

(a) establish local health department policies;

(b) adopt an annual budget;

(c) monitor expenditures;

(d) oversee compliance with general and specific performance standards;

(e) provide for long range planning;

(f) appoint a qualified local health officer, subject to ratification by the governing bodies of the participating jurisdictions;

(g) periodically, but at least annually, evaluate the performance of the local health officer; and

(h) report at least annually to county commissioners regarding health issues.

(3) Each local health department shall have an annual financial audit. The local board of health shall appoint an independent auditor or the audit may be conducted as part of the county audit and, in any event, the local board of health shall accept the audit.

(4) (a) A local health officer who is a physician shall:

(i) be a graduate of a regularly chartered and legally constituted school of medicine or osteopathy;

(ii) be licensed to practice medicine in the state of Utah;

(iii) have successfully completed at least one year's graduate work in public health, public administration or business administration;

(iv) be board certified in preventive medicine or in a primary care specialty such as family practice, pediatrics, or internal medicine; and

(v) have at least two years of professional full-time experience in public health or preventive medicine in a senior level administrative capacity.

(b) A local health officer who is not a physician shall:

(i) have successfully completed a master's degree in public health, nursing or other health discipline related to public health, or public administration, or business administration from an accredited school and have at least five years of professional full-time public health experience, of which at least three years were in a senior level administrative capacity; or

(ii) have successfully completed a bachelor's degree in a field closely related to public health work from an accredited school and have at least 12 years of professional full-time public health experience, of which at least 10 years have been in a senior level administrative capacity.

(c) If the local health officer is not a physician, the local health department shall contract with or employ a physician that is:

(i) residing in Utah and licensed to practice medicine in the state;

(ii) competent and experienced in a primary medical care field, such as family practice, pediatrics, OBGYN, or internal medicine;

(iii) board certified in preventive medicine or in a primary care specialty such as family practice, pediatrics, or internal medicine;

(iv) able to supervise and oversee clinical services delivered within the local health department, including the approval of all protocols and standing orders;

(v) able to play a substantial role in reviewing policies and procedures addressing human disease outbreaks of public health importance; and

(vi) able to participate in the Department's local health department physician network.

(d) Local health officers serving as of November 1, 2004, as well as the contracted or employee physician, are deemed to meet the requirements of R380-40-6(4) for the period that the individual so identified serves in those capacities. Upon the hiring of a new local health officer or employing or contracting with a new physician, the requirements of R380-40-6(4)(a), (b), and (c) must be met.

(e) The Executive Director may grant an exception to the local health officer and physician requirements upon written request from a Local Board of Health documenting the failure of serious and substantial efforts to recruit candidates who meet the requirements or how the intent of the rule can be met by a method not specified in the rule.

(5) The local health officer shall:

(a) promote and protect the health and wellness of the people within the jurisdiction;

(b) function as the executive and administrative officer;

(c) report to and receive policy direction from the board of health;

(d) coordinate public health services in the district;

(e) direct programs assigned by statute to the local health department, including administering and enforcing state and local health laws, regulations and standards;

(f) direct the investigation and control of diseases and conditions affecting public health;

(g) be responsible for hiring, terminating, supervising, and evaluating all local health department employees;

(h) oversee proposed budget preparation;

(i) present the budget to the board of health for review and approval;

(j) develop and propose policies for board consideration;

(k) implement policies of the local board of health;

(l) advise the department with regard to policy development as those policies impact upon the mission, purpose, and capacity of the local health department; and

(m) perform other duties as assigned by the board of health.

(6) The local health officer shall ensure that an ongoing planning process is initiated and maintained that includes mission statement; community needs assessments; problem statements; goals, outcomes, and process objectives or implementation activities; evaluation; public involvement; and use of available data sources.

(7) The local health officer shall ensure that fiscal management procedures are developed, implemented and maintained in accordance with federal, state, and local government requirements.

(8) Consistent with federal and state laws and local ordinances and policies, the local health officer shall ensure:

(a) that employees are recruited, hired, terminated, classified, trained, and compensated in accordance with relevant merit principles, federal civil rights requirements, and laws of general applicability, and that their qualifications are commensurate with job responsibilities;

(b) the orientation of all new employees to the local health department and its personnel policies;

(c) the maintenance of a personnel system that includes an accurate, current, and complete personnel record for each local health department employee;

(d) the verification of all current licensure and certification requirements;

(e) continued education and training for all employees;

(f) that each employee receives an annual performance evaluation, based upon a job description and written performance expectations for each employee; and

(g) all training and certification programs for establishing and maintaining quality performance will be conducted as required by the Utah Department of Health and the Utah Department of Commerce.

(9) A local health officer or designee who is a physician or osteopath licensed to practice medicine in Utah shall supervise and be accountable for medical practice conducted by local health department employees. If the local health officer is not a physician or osteopath licensed in Utah, he shall appoint a medical director licensed to practice medicine or osteopathy in Utah to supervise and be accountable for medical practice conducted by local health department employees.

(10) Each local health department shall employ a registered nurse with education, experience, and Utah licensure consistent with the position requirements to supervise, evaluate, and be accountable for nursing practice conducted by local health department nurses in order to provide quality public health nursing service.

(11) Each local health department shall employ a health educator or other qualified person with education and experience consistent with the position requirements to direct health education activities.

(12) Each local health department shall employ a sanitarian registered in Utah with education and experience consistent with the position requirements to supervise, evaluate, and be accountable for environmental health activities in order to protect and promote public health and protect the environment.

(13) Programs provided by local health departments shall be developed, directed, and organized in response to community needs; delivered and controlled in accordance with approved budget; and evaluated by using a management information system. The management information system, when consistent with program objectives, shall include a method to determine client satisfaction.

(a) Each local health department shall collect and manage data in accordance with the needs of local health department programs, department programs, and other funding sources.

(b) Each local health department shall provide all public health services in compliance with federal, state, and local (including district) laws, regulations, rules, policies and procedures; and accepted standards of public health, medical and nursing practice.

(c) Each local health department shall maintain an ongoing quality assurance program for public health services designed to objectively and systematically monitor and evaluate the quality of public health services and resolve identified problems.

R380-40-7. General Performance Standards For Local Health Department Personal Health Services.

(1) Each local health department shall provide health education, health promotion and risk reduction services to assist residents to:

(a) obtain the necessary knowledge, skills, capacity, and opportunity to improve and maintain individual, family, and community health;

(b) use preventive health services, practices, and facilities appropriately;

(c) understand and participate, where feasible, in decision-making concerning their health care;

(d) understand and encourage compliance with prescribed medical instructions;

(e) participate in community health decision making; and

(f) prevent or delay premature death, disease, injury, or disability through services that encourage the long-term adoption of healthy behavior.

(2) Each local health department shall provide communicable disease control services to include: reporting, surveillance, assessment, epidemiological investigation, and appropriate control measures for vaccine-preventable diseases, sexually transmitted diseases, tuberculosis, AIDS, and other communicable diseases to attempt to prevent, control, or prevent and control epidemics, cases of vaccine-preventable diseases, and the spread of sexually transmitted diseases, AIDS, and tuberculosis.

(3) Each local health department shall provide infant and child health services to help prevent illness, injury, and disability; reduce the preventable complications of illness, injury, and disability; maintain health; and foster healthy growth and development. These services shall include: periodic health assessments; screening for and early identification of health and developmental problems; and provision of appropriate treatment, education, or referral.

(4) Each local health department shall ensure that families of referred cases of infant and childhood death including Sudden Infant Death Syndrome cases, are offered counseling services or referred to counseling services.

(5) Each local health department shall advocate and promote preventive health services and health instruction for school-aged children.

(6) Each local health department shall ensure that injury control needs are identified and programs or services are available to reduce the occurrence of injury and unintentional death.

(7) Each local health department shall provide chronic disease control services which may include screening, referral, education, promotion, and preventive activities related to the prevention of cardiovascular disease, cancer, diabetes, and other chronic diseases to reduce premature morbidity and mortality associated with these diseases.

(8) Each local health department shall provide family planning services including information to clients who request it and referral in accordance with State law.

(9) Each local health department shall ensure that women and families have access to risk appropriate preconceptional, interconceptional, prenatal, intrapartum, and postpartum health services with the objective of lowering the frequency of maternal and infant death, disease and disability, and promoting the development and maintenance of a healthy, nurturing family unit.

(10) Each local health department shall provide dental health services which may include dental health screening, referral, education, promotion, and preventive activities.

R380-40-8. General Performance Standards For Local Health Department Environmental Health Programs.

(1) Each local health department shall ensure that there is a program for:

(a) food service establishments to include: the maintenance of an inventory, directory, or listing of establishments; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

(b) public swimming pools to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

(c) institutions, public facilities, and indoor and outdoor facilities to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

(d) safe drinking water to include: the maintenance of an inventory, directory, or listing of systems; inspections including corrective actions; an information management system; and the dissemination of public information;

(e) nuisance complaints to include: inspections including corrective actions; an information management system; and the dissemination of public information;

(f) vector control to include: complaint inspections including corrective actions; an information management system; and the dissemination of public information;

(g) air quality and air pollution control to include: conducting limited inspections of visible emissions including corrective actions; an information management system; and the dissemination of public information;

(h) injury control to include: inspections including corrective actions; an information management system; and the dissemination of public information;

(i) indoor clean air to include: inspections of public facilities including corrective actions; an information management system; and the dissemination of public information;

(j) solid waste to include: an inventory, directory, or listing of locations; inspections including corrective actions; an information management system; and the dissemination of public information; and

(k) subsurface waste water systems to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information.

(2) Each local health department shall develop, implement, and maintain special programs, such as programs to respond to noise, hazardous waste, and asbestos abatement control, to meet the special or unique needs of its community as determined by local or state needs assessment.

R380-40-9. General Performance Standards For Local Health Department Laboratory Services.

All local health departments that have a laboratory are not exempt from existing state and federal laboratory requirements.

R380-40-10. General Performance Standards For Local Health Department Health Resources.

(1) Epidemiology. Each local health department shall provide for the investigation, detection, control, and development of preventive strategies of any communicable, infectious, acute, chronic, or other disease, or environmental or occupational health hazard that is considered dangerous or important or which may affect the public health. Reportable diseases shall be reported.

(2) Vital Statistics. Each local health department designated as a local registrar of vital statistics shall ensure the registration of appropriate certificates for all live births, deaths, and fetal deaths that occur in the registration area, as required by State statute.

KEY: local health departments, performance standards
February 2, 2005 26A-1-106(1)(c)
Notice of Continuation June 19, 2000

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-507. Medicaid Long Term Care Managed Care.
R414-507-1. Introduction and Authority.

(1) The Medicaid LTC Managed Care program is designed to enable an adult Medicaid recipient who needs a level of care consistent with the need for services provided in a nursing facility to receive an individualized package of services to maintain health and safety in a variety of appropriate service settings.

(2) This rule is authorized by Utah Code Section 26-18-3. This program is authorized by 42 USC 1396n(a) and is a component of the Utah Medicaid State Plan. As provided in 42 USC 1396n(a), the state is not out of compliance with the requirements of paragraphs (1), (10) or (23) of 42 USC 1396a solely because the state has entered into a contract with an organization that has agreed to provide care and services in addition to those offered under the State Plan to individuals eligible for medical assistance. The Department may enter into one or more contracts with Medicaid managed care organizations for the operation of projects under the LTC Managed Care program.

R414-507-2. Definitions.

The definitions in R414-1 apply to this rule. In addition:

(1) "Care Coordination" is a process where representatives of Medicaid programs serving an individual, and the individual's attending physician when possible, participate in the exchange of information and service planning to assure that the individual's health and welfare needs are identified, develop a comprehensive service plan, and implement the service plan to achieve integration of care across programs.

(2) "Long Term Care" (LTC) means a comprehensive array of services provided to persons of all ages who are experiencing chronic functional limitations due to illness, disability or injury.

(3) "LTC Managed Care Project Contractor" is a Medicaid Primary Inpatient Health Plan or a Medicaid Prepaid Mental Health Plan that has contracted with the Medicaid agency to provide a long term care service package as part of its array of covered services.

R414-507-3. Client Eligibility Requirements.

(1) Participation in the LTC Managed Care program is limited to individuals who:

(a) have been in a medical institution for at least 30 consecutive days as a Medicare or Medicaid patient; or

(b) have been in a Medicaid 1915(c) Home and Community-Based Services waiver for at least 30 consecutive days.

(2) A client must meet all financial eligibility requirements for institutional care.

(3) Consistent with the provisions of 42 USC 1396n(a), individuals enrolled in the LTC Managed Care program remain eligible under 42 USC 1396a(10)(A), regardless of the setting in which the services of the program are delivered.

R414-507-4. Program Access Requirements.

(1) Participation in the LTC Managed Care program is limited to Medicaid recipients who:

(a) require the level of care provided in a nursing facility as determined under in R414-502 of the Utah Administrative Code;

(b) are age 18 or older; and

(c)(i) reside in a Medicaid certified nursing facility on an extended stay basis;

(ii) are on an inpatient status in a licensed Utah medical institution other than a Medicaid certified nursing facility and have been designated by the attending physician for discharge to a nursing facility for an extended stay of 30 days or more; or

(iii) are enrolled in a Medicaid 1915c Home and Community-Based Services waiver as an alternative to nursing facility placement and have been determined by the state to require disenrollment from the 1915c Home and Community-Based Services waiver due to health and welfare concerns.

(2) In the case of acute care hospitals, specialty hospitals, and Medicare skilled nursing facilities, participation is limited to persons who are admitted for the purpose of receiving a medical, non-psychiatric level of care more acute than the Medicaid nursing facility level of care provided in R414-502.

(3) Persons who meet the intensive skilled level of care as provided in R414-502 are not eligible for participation in the LTC Managed Care program.

(4) Persons who meet the level of care criteria for admission to an Intermediate Care Facility for the Mentally Retarded as provided in R414-502 are not eligible for participation in the LTC Managed Care program.

(5) Residents of a nursing facility who have selected the Medicare or Medicaid hospice benefit are eligible to participate in the LTC Managed Care program only if enrollment in the LTC Managed Care program results in the individual's receiving continued hospice care in his or her own home or the home of a family member or personal caregiver.

R414-507-5. Service Coverage.

(1) An enrollee in the LTC Managed Care program receives medical, mental health , and institutional and home and community-based LTC services to address the individual's health and safety needs.

(2) The LTC Managed Care program provides the Medicaid State Plan nursing facility service, care coordination, and home and community based long term care services.

(3) The LTC Managed Care Project Contractor must:

(i) use the InterRAI Minimum Data Set- HOME CARE assessment instrument and other clinical assessments necessary to identify the individual's needs;

(ii) develop, in consultation with the individual and the individual's attending physician when possible, a comprehensive written service plan that:

(A) addresses identified needs in an appropriate setting;

(B) coordinates LTC Managed Care program benefits between all service providers; and

(iii) assure implementation of the comprehensive written service plan.

(4) The LTC Managed Care Project Contractor may not pay for LTC services provided by persons who otherwise have a legal responsibility for providing the care, such as a spouse or legally appointed guardian.

(5) A resident of a nursing facility who is admitted from a home or community setting is not eligible for the LTC Managed Care program until a 90-day continuous stay has been completed in a Utah nursing facility or a Utah Medicaid enrolled nursing facility in an adjoining state.

(6) A participant in a Medicaid 1915c Home and Community-Based Services Waiver who is eligible for the LTC Managed Care program in accordance with R414-507-4(1)(e) may enroll in the LTC Managed care program without completing a stay in a Utah nursing facility if the state determines the LTC Managed care program can meet the health and safety needs of the individual in a community setting at the time of enrollment.

(7) An individual residing in a Medicare skilled unit is not eligible to enroll in the LTC Managed Care program until the full available Medicare Part A benefit for skilled nursing care is exhausted.

(8) An individual enrolled in the LTC Managed Care program must exhaust all available Medicare Part B benefits and other third party benefits before utilizing comparable services through the LTC Managed care program.

R414-507-6. Freedom of Choice.

(1) Upon enrollment in the LTC Managed Care program, the individual may choose among the LTC Managed Care Project Contractors serving in the individual's desired service area.

(2) Upon selecting the LTC Managed Care Project Contractor,

the individual is bound by the requirements of the LTC Managed Care program and the Department-approved policies and procedures adopted by the LTC Managed Care Project Contractor for operation of the program.

(3) A LTC Managed Care program enrollee may disenroll from the program at any time with or without cause. A voluntary disenrollment is effective when the enrollee has notified the Department and the Department issues a new Medicaid card that indicates disenrollment on the eligibility transmission.

(4) An enrollee of the LTC Managed Care program who desires to change LTC Managed Care Project Contractors is subject to the provisions of R414-140.

R414-507-7. Evaluation and Reevaluation of Nursing Facility Level of Care.

The Department, or its designee, initial evaluates and periodically reevaluates at least annually each LTC Managed Care enrollee to determine whether the individual meets the admission criteria of R414-502.

R414-507-8. Reimbursement for Services.

(1) Each LTC Managed Care Project Contractor receives a monthly pre-payment per enrollee in an amount established by the Department at the beginning of each state fiscal year.

(2) The LTC Managed Care Project Contractor must submit a financial report on a Department-approved form for the fiscal year reporting period, in accordance with the particular project contract requirements.

(3) After the conclusion of each fiscal year, the Department conducts a cost settlement with each LTC Managed Care Project Contractor. To conduct the cost settlement, the Department first reviews LTC Managed Care Project Contractor expense records and documentation to determine the amount of allowable program expenses. The Department then compares the allowable program expense amount with the aggregate amount of the prepayments the Department paid the LTC Managed Care Project Contractor during the prior fiscal year. The Department also calculates any financial incentives for which the LTC Managed Care Project Contractor qualifies. Based on these calculations, the Department determines an amount due to or owed by the LTC Managed Care Project Contractor.

R414-507-9. Cost Neutrality.

(1) Cost-effectiveness of the LTC Managed Care program is measured as an aggregate of all enrollees over time. The Department's total expenditures for the LTC Managed Care program and other Medicaid services provided to individuals enrolled in the LTC Managed Care program, shall in any given year, not exceed the amount that would be incurred by the Medicaid program for a comparable population in a nursing facility.

(2) The LTC Project Contractor must meet each enrollee's assessed needs regardless of the individual's cost or complexity of care. The LTC Project Contractor cannot place an expenditure cap on any enrollee.

R414-507-10. New Project and Project Expansion Proposals.

(1) Organizations interested in partnering with the Department of Health in a new LTC Managed Care project or to expand the geographical area served by an existing LTC Managed Care project must submit a written project proposal demonstrating the feasibility of the project for consideration by the Department.

(2) The written project proposal must include as a minimum the following topics to demonstrate the added value that the project will contribute to the LTC Managed Care program and the long term viability of the project for the specific geographical area to be served.

(a) project purpose, goals and objectives;

(b) project organizational structure;

(c) a description of services and supports to be provided and the general sequence in which the various elements of the long term care array will be developed;

(d) a description of the residential and work settings where services will be delivered;

(e) a description of the geographical area to be covered;

(f) a project development and implementation schedule;

(g) project quarterly growth projections and estimated maximum capacity;

(h) a description of the target populations;

(i) a description of the referral network to be accessed to identify potential project participants and the outreach approaches to be utilized to educate the referral network about the project;

(j) a description of the specific performance indicators to guide the progress of the project and to measure the level of achievement of stated goals and objectives;

(k) a description of long term care best practices incorporated into the project, that includes a self-directed approach to service planning and budgeting for enrollees who have the ability to be actively involved in their health care decisions;

(l) a financial pro forma statement for the project; and

(m) a description of other publicly financed programs that the project contractor or partners are involved with that present opportunities to integrate multiple program activities and strengthen common priorities or that pose potential conflicting priorities between programs and how the contributing and conflicting issues will be managed.

(3) Each proposal must include sufficient information to allow the Department to evaluate the project's ability to operate in accordance with R414-507, to protect the health and safety of persons served through an alternative delivery approach to nursing facility care, and to maintain financial stability.

(4) The Department will issue a written notice authorizing or denying a proposed project within 90 days of receipt of the written proposal. If the Department issues a written request for additional information, the additional information must be submitted within 30 days of the date of the Department's request and the maximum review time frame is extended to 120 days.

KEY: Medicaid
February 15, 2005 **26-1-5**
26-18-3

R590. Insurance, Administration.
R590-147. Annual and Quarterly Statement Filing Instructions.
R590-147-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3), which authorizes the commissioner to establish by rule specific requirements for filing forms, rates, or reports required by the Utah Insurance Code; Section 31A-2-202, which authorizes the commissioner to require statements, reports and information to be delivered to the department or the National Association of Insurance Commissioners (NAIC) in a form specified by the commissioner; and Section 31A-4-113, which authorizes the commissioner to prescribe by rule the information to be submitted with and form of the annual statement.

R590-147-2. Purpose.

The purpose of this rule is to provide instructions for the filing of insurer annual and quarterly statements and required supplemental schedules, exhibits, and documents.

R590-147-3. Scope.

This rule applies to all insurers required to file annual and quarterly statements with the commissioner in this state.

R590-147-4. Definitions.

(1) For purposes of this rule:

(a) the commissioner adopts the definitions as particularly set forth in Section 31A-1-301; and

(b) "Insurer" includes all licensees who are licensed under Chapters 5, 7, 8, 9, 14 or 15 of Title 31A of the Utah Code.

R590-147-5. Rule.

(1) The annual statement, quarterly statements, and required supplemental schedules, exhibits, and documents shall be prepared in accordance with the latest edition of the NAIC annual and quarterly statement instructions and the accounting practices and procedures manual published by the NAIC.

(2)(a) All insurers shall file their annual statements, quarterly statements, and required supplemental schedules, exhibits, and documents electronically with the NAIC in accordance with the NAIC annual and quarterly statement instructions. The commissioner may allow insurers that operate only in Utah to file hard copy forms with the department and exempt them from filing electronically with the NAIC.

(b) Domestic insurers ONLY shall additionally file two paper copies of all documents required by Subsection R590-147-5(1) with the department, in accordance with the deadlines established in the NAIC annual and quarterly statement instructions.

(c) Foreign and alien insurers shall NOT file paper copies of documents required by Subsection R590-147-5(1) with the department, unless specifically requested by the commissioner.

(3) Administrative penalties, authorized by 31A-2-308, may be assessed to any insurer that:

(a) Fails to file an annual statement, quarterly statements, or required supplemental schedules, exhibits, and documents by the dates specified in the NAIC and department annual and quarterly statement instructions, or by the deadline established in any filing extensions granted by the department; or

(b) Fails to file a complete annual or quarterly statement filing.

(4) NAIC and department filing instructions, including due dates, may be found at the following websites: www.naic.org and www.insurance.utah.gov.

R590-147-6. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

R590-147-7. Enforcement Date.

The commissioner will begin enforcing the revised portions of this rule 45 days from the effective date of the rule.

KEY: insurance

February 10, 2005	**31A-2-201**
Notice of Continuation February 21, 2002	**31A-2-202**
	31A-4-113

R590. Insurance, Administration.
R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.
R590-196-1. Purpose.

This rule establishes uniform fee and collateral standards for bail bond surety business in the State of Utah.

R590-196-2. Authority.

This rule is promulgated pursuant to Section 31A-35-104 which requires the commissioner to adopt by rule standards of conduct for bail bond surety business.

R590-196-3. Scope and Applicability.

This rule applies to any person engaged in bail bond surety business.

R590-196-4. Fee Standards.

(1) Initial bail bond fees.

(a) Bail bond premium:

(i) minimum fee: none;

(ii) maximum fee: not to exceed 20% of bond amount.

(b) Document preparation fee may not exceed $20 per set of forms pertaining to one bail bond.

(c) Credit card fee may not exceed 5% of the amount charged to the credit card.

(2) Other fees.

(a) These fees are limited to actual and reasonable expenses incurred by the bail bond surety because:

(i) the defendant fails to appear before the court at any designated dates and times;

(ii) the defendant fails to comply with the court order; or

(iii) the defendant or the co-signer fails to comply with the terms of the bail bond agreement and any promissory notes pertaining to that agreement.

(b) Reasonable expense fee for mileage is the Internal Revenue Service standard for business mileage.

(c) Apprehension expenses such as meals, lodging, commercial travel, communications, whether or not the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, i.e., meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.

(d) Reasonable collateral expense fees:

(i) actual expenses to obtain collateral; and

(ii) storage expenses if in a secured storage area, limited to actual expenses.

(e) A late payment fee of $20 or 5% of the delinquent periodic payment which ever is less.

R590-196-5. Collateral Standards.

(1) Collateral may be provided to secure bail bond fees, the face amount of the bail bond issued, or both.

(2) If the bail bond surety accepts the same collateral to secure the bail bond fees and the face amount of the bail bond issued, then, in the event of a failure to pay bail bond fees when due, the collateral may not be converted until the bail bond is exonerated or judgment entered against the surety and the depositor has been given no less than 15 days to pay any bond fees owing.

(3) If the bail bond surety accepts different collateral to secure the bail bond fee and the face amount of the bail bond issued then:

(i) the collateral securing the bail bond fees may not be converted until payment has been defaulted under the terms of the promissory note for those fees, and the depositor of the collateral has been given no less than 15 days to make the required payment;

(ii) the collateral securing the face amount of the bail bond issued may not be converted until the bond is exonerated or judgment entered against the surety and the depositor of the collateral has been given no less than 15 days to reimburse the bail bond surety for any amounts owed to the bail bond surety.

(4) The bail bond surety, its agents taking possession of collateral, or both, will hold said collateral as a fiduciary until such time as ownership of the collateral passes to the bail bond surety.

(5) Collateral held as a fiduciary may not be used by the bail bond surety or its agents without the specific written permission of the depositor of the collateral.

(6) Should proceeds from converted collateral exceed the outstanding balance due, the bail bond surety will return the excess to the depositor of the collateral.

(7) Notice under the rule shall be deemed proper if it is sent via first class mail to the address provided by the depositor of the collateral.

R590-196-6. Disclosure Form.

The bail bond surety and its agents will use the following disclosure form or a form that contains similar language.

TABLE

XYZ Bail Bonds Disclosure Form
1234 South 1234 East, Salt Lake City, UT 84444:
801-123-4567 fax: 801-098-7654
Defendant.....Co-Signer.....
Court.....Charge.....
Bond amount $.....Bond number.....
Initial Fees, non-refundable.
....bond premium, maximum: no more than 20%;
minimum: none. $.....
....document preparation, not to exceed $20
per set of bond forms. $.....
....credit card fee, not to exceed 5% of amount
charged to credit card $.....
total initial fees $.....

Additional Fees.
Limited to actual and reasonable expenses required because the defendant fails to appear before the court at any designated times, or fails to comply with the court order, or fails to comply with the terms of the bail bond agreement or any promissory notes pertaining to that agreement. The following are some reasonable expense fees:
(1) reasonable expense fee for mileage is IRS mileage reimbursement standard for business miles;
(2) reasonable apprehension expense fees include meals at mid-range restaurants, lodging at mid-range hotels, transportation at no more than coach fares; and
(3) reasonable collateral expense fees: actual expenses to obtain collateral and, actual storage expenses, if collateral is in a secured storage area.
(4) A late payment fee of $20 or 5% of the delinquent periodic payment which ever is less.

Grounds for revocation of bond.
Should the defendant violate any of the following, the defendant shall be subject to immediate bond revocation and the defendant, or the co-signer, or both, shall be subject to all the costs incurred to return the defendant to the court. Grounds for revocation include the following:
(a) the defendant or co-signer providing materially false information on bail bond application;
(b) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond agent or bail bond surety;
(c) a material and detrimental change in the collateral posted by the defendant or one acting on defendant's behalf;
(d) the defendant changes their address or telephone number or employer without giving reasonable notice to the bail bond agent or bail bond surety;
(e) the defendant is arrested for another crime, other than a minor traffic violation, while on bail;
(f) the defendant is back in jail in any jurisdiction and revocations can be served prior to the defendant being released;
(g) failure by the defendant to appear in court at any appointed times;
(h) finding of guilt against the defendant by a court of competent jurisdiction;
(i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.

Collateral.
The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:
.....
.....
.....
The following has been given as collateral to guarantee payment of

bond fees:
.....
.....
In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.

By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.

Date.....Defendant.....
Date.....Co-signer.....
Date.....Depositor.....
I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.
Date.....Bail Bond Agent.....

R590-196-7. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-196-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

R590-196-9. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

KEY: insurance
February 10, 2005 31A-35-104
Notice of Continuation January 7, 2005

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-6(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-6(B)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the

utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-6(B)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-7, Informal Review, and R746-200-8, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B), Breach.

2. Gas and electric utilities shall have personnel available 24 hours each day to reconnect utility service, if, before reconnection, the account holder agrees to negotiate and execute a deferred payment agreement and to pay the first installment by visiting the utility's business office within 48 hours after service has been reconnected. A water utility shall have personnel available so that service can be restored before 6:00 p.m. on the next generally recognized business day.

3. The applicant or account holder shall have the right to set the amount of the equal monthly installment of a deferred payment agreement, if the full amount of the delinquent balance plus interest shall be paid within 12 months and if the account holder agrees to make an initial payment not less than the amount of the monthly installment. The account holder shall have the right to pre-pay the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

4. If a utility has a budget billing or equal payment plan

available, it shall offer the account holder the option of agreeing to pay the current bills for residential utility service plus the monthly installment necessary to liquidate the delinquent bill or of agreeing to pay a budget billing amount set by the utility plus the monthly deferred payment installment. When negotiating a deferred payment agreement with a utility that does not offer a budget billing plan, the account holder shall agree to pay the current bills for residential utility service plus the monthly installment necessary to liquidate the delinquent bill.

5. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

6. A deferred payment agreement may include a finance charge as established by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's option.

R746-200-6. Termination of Service.

A. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-6(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

B. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

C. Restrictions upon Termination of Service During Serious Illness --

1. Residential gas, water, sewer and electric utility service may not be terminated and will be restored if terminated when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence. Utility service will be restored or continue for one month or less as stated in Subsection R746-200-6(C)(2).

2. Upon receipt of a statement, signed by an osteopathic physician, a physician, a surgeon, a naturopathic physician, a physician assistant, a nurse, or a certified nurse midwife, as the providers are defined and licensed under Title 58 of the Utah Code, either on a form obtained from the utility or on the health care provider's letterhead stationery, which statement legibly identifies the health infirmity or potential health hazard, and how termination of service will injure the person's health or aggravate their illness, a public utility will continue or restore residential utility service for the period set forth in the statement or one month, whichever is less; however, the person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

3. During the period of continued service, the account holder is liable for the cost of residential utility service. No action to terminate the service may be undertaken, however, until the end of the period of continued service.

D. Restrictions upon Termination of Service to Residences with Life-Supporting Equipment -- No public utility shall terminate service to a residence in which the account holder or a resident is known by the utility to be using an iron lung, respirator, dialysis machine, or other life-supporting equipment whose normal operation requires continuation of the utility's service, without specific prior approval by the Commission. Account holders eligible for this protection can get it by filing a written notice with the utility, which notice form is to be obtained from the utility, signed and supported by a statement consistent with that required in part C.2. above, and specifically identifying the life-support equipment that requires the utility's service. Thereupon, a public utility shall mark and identify applicable meter boxes when this equipment is used.

E. Payments for HEAT, Home Energy Assistance Target, Program -- The Commission approves the provision of the Department of Human Service's standard contract with public utility suppliers in Utah that suppliers will not discontinue utility service to a low-income household for at least 30 days after receipt of utility payment from the state program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard

exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-6(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-6(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-6(C), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-6(D), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-7.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-7. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a

designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation –- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation –- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review –- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-6(F), Termination of Service Without Notice.

R746-200-8. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-9. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff

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