R15. Administrative Services, Administrative Rules.
R15-4. Administrative Rulemaking Procedures.
R15-4-1. Authority and Purpose.

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63-46a-4, 63-46a-6, and 63-46a-7, as authorized under Subsection 63-46a-10(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63-46a-9(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63-46a-10(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "eRules" means the Division's administrative rule filing application that agencies use to file rules and notices;

(g) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(h) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63-46a-4(2) and 63-46a-6(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-day Comment Period for a Proposed Rule and a Change in Proposed Rule.

(1) For the purposes of Sections 63-46a-4 and 63-46a-6, "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

R15-4-5a. Notice of the Effective Date for a Proposed Rule.

(1)(a) Pursuant to Subsection 63-46a-4(9), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.

(1)(a) Upon expiration of the 30-day period required by Section 63-46a-6, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the rule text as published is the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the division or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a subsequent notice in the bulletin.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63-46a-3(4)(d) and 63-46a-6(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

(1) Pursuant to Section 63-46a-6, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63-46a-2(19);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63-46a-6(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-day Rules.

(1) Pursuant to Section 63-46a-7, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63-46a-7(1).

(a) The division interprets the criteria of Subsection 63-46a-7(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1) (a) Pursuant to Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63-46a-16 and that the agency must comply with regular rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63-46a-4(3), 63-46a-6(1), 63-46a-7(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

KEY: administrative law
August 24, 2007 **63-46a-10**
Notice of Continuation September 29, 2005 **63-46a-4**
63-46a-6

R21. Administrative Services, Debt Collection.
R21-1. Transfer of Collection Responsibility of State Agencies.
R21-1-1. Purpose.

The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-8-201(4)(g), 63A-8-201(6)(b), Section 15-1-4,Utah Code, and by the Legislature in applicable laws.

R21-1-2. Authority.

This rule is established pursuant to Subsections 63A-8-201(3)(m), 63A-8-201(6)(f), 63A-8-201(4)(g), 63A-8-201(6)(b), Section 15-1-4, Utah Code and the Office intent language and fees authorized by the Legislature in applicable laws. Subsection 63A-8-201(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-8-201(6)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-8-201(6)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-8-201(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63-38-3.2. Subsection 63A-8-201(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-8-201(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and provides legislative intent language allowing the costs of collection to be collected from the debtor.

R21-1-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

(1) (1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

(2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.

(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

(4) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.

(5) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.

(6) "Trust" means a receivable that is owed to a victim of a crime.

R21-1-4. Agency Billing and Collection Responsibility.

Pursuant to Subsection 63A-8-201(3)(b),(d), and (f) as provided by Subsection 63-46a-3(4)(b), state agencies shall document and track agency receivables on the state's Advanced Receivable Subsystem unless the state agency has received an exemption from the Advisory Board to the Office of State Debt Collection. If a state agency receives such an exemption, the state agency shall track their receivables on the agency system and provide the Office with quarterly receivable reports pursuant to 63A-8-201(6)(g). The receivable reports are due to Office no later than 45 days after the end of the quarter.

State agency customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring. The payment demand date shall be no later than 30 days from the event date unless the state agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes. State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

The Office has published guidelines for billing receivables and collecting delinquent accounts. These guidelines are included in the document entitled "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable". This document is available at the Office of State Debt Collection, Room 5110 State Office Building, Salt Lake City, Utah, during regular working hours, for review.

R21-1-5. Transfer of Collection Responsibility.

Each state agency with delinquent accounts shall comply with the provisions of Section 63A-8-201, et seq. unless prohibited by current state or federal statute or regulation. A state agency or user of the Office of State Debt Collection services shall transfer collection responsibility to the Office, or its designee, when the account receivable is not paid within 90 days of the event or is delinquent 61 days. A state agency can negotiate a different receivable transfer date with the Office by demonstrating how the state benefits from the negotiated transfer date. Office recommendations related to the transfer of collection responsibility can be found in the Office publication "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable".

R21-1-6. Format for Transfer of Accounts Receivable Data.

State agencies shall transfer delinquent accounts to the Office or its designee electronically through the state's Advanced Receivable Subsystem. State agencies exempted from using the state's Advanced Receivable Subsystem shall work with the Office to generate an electronic placement file for placing accounts.

R21-1-7. Costs of Collection.

Pursuant to Subsections 63A-8-201 (4) (g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority shall be applied according to the following methodology.

(a) Pursuant to 63A-8-201(4)(g)(i), the costs of collection shall be charged on all accounts referred for collection and the cost shall be calculated based on the dollars collected times the rate authorized by the legislature. The cost of collection shall be paid first from each payment.

(b) ThePenalty shall be calculated as a percent of the receivable balance referred for collection. A percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full. The penalty payment shall be calculated based on the authorized penalty percent set annually by the legislature, times the received payment amount. The calculated penalty amount shall be paid after the costs of collecton are determined and paid.

(c) Two types of interest shall be charged on accounts referred to the OFFICE. Postjudgment interest as established by

Section 15-1-4, Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999. Postjudgment interest accrues on the unpaid judgment balance of the receivable. Postjudgment interest that accrues on a trust or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable. All other state receivables referred to the Office are charged an interest charge pursuant to 63A-8-201 (4) (g)(iii)(B), Utah Code. This interest is referred to as OSDC interest. OSDC accrued interest shall be paid from each payment after the payment of the costs of collection and the penalty except on trust receivables or receivables including a trust account.

(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust receivable balance, and 4th - the accrued postjudgment interest.

(e) Each payment received on receivables that include trust(s) and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust(s) receivable balance until paid in full, 4th - accrued post-judgment or OSDC interest on the state receivable balance, 5th - the state receivable balance, and 6th - the accrued trust post-judgment interest.

(f) Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd penalty payment, 3rd - accrued post-judgment or OSDC interest, and 4th - the receivable balance.

(g) Trust Payments sent to victims of crimes that are returned to the Office because of bad addresses, shall be reversed from the trust account and applied to amounts owed the state on the account. After the state debt is liquidated, payments shall be applied to the trust and if the victim still cannot be located, the payments shall be retained by the division of Finance for the appropriate time and then sent to Unclaimed Property and thereafter to Crime Victims Reparation.

R21-1-8. Write Off of Accounts Receivable.

State agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance.

KEY: accounts receivable collection transfer

August 13, 2002	**63A-8-201(3)(m)**
Notice of Continuation August 29, 2007	**63A-8-201(4)(g)**
	63A-8-201(6)(a)
	63A-8-201(6)(b)
	63A-8-201(6)(f)
	15-1-4

R21. Administrative Services, Debt Collection.
R21-2. Office of State Debt Collection Administrative Procedures.
R21-2-1. Purpose.

The purpose of this rule is to establish the form of adjudicative proceedings, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process.

R21-2-2. Authority.

This rule establishes procedures for informal adjudicative proceedings as required by Sections 63-46b-4 and 63-46b-5 of the Utah Administrative Procedures Act.

R21-2-3. Definitions.

In addition to terms defined in Sections 63A-8-101 and 63-46b-2, the following terms are defined below as follows:

(1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

(2)(a) "Participate" means present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(b) if a hearing is scheduled, "participate" means attend the hearing.

(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

R21-2-4. Designation of Presiding Officers.

All matters over which the office has jurisdiction and which are subject to Section 63-46b-4 will be presided over by the office director or designee.

R21-2-5. Form of Proceeding.

All adjudicative proceedings commenced by the office or commenced by other persons affected by the office's actions shall be informal adjudicative proceedings.

R21-2-6. Adjudicative Proceedings.

(1) The following actions are considered to be adjudicative proceedings:

(a) All hearings which lead to the establishment of an Order to collect delinquent accounts receivable owed to an agency of the State;

(b) All hearings which lead to the amending of an Administrative Order; and

(c) All hearings which lead to the setting aside of an Administrative Order.

R21-2-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Title 63, Chapter 46b may be served using methods provided in Title 63, Chapter 46b or outlined by the Utah Rules of Civil Procedures.

R21-2-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings will be as follows:

(1) The presiding officer will issue an order of default unless the entity does one of the following in response to service of a notice of office action:

(a) pays the entire delinquent account receivable in full; or

(b) participates as provided in Section R21-2-11;

(2) The presiding officer shall schedule a hearing if available under Section R21-2-9 and the entity requests it in writing within the following time periods:

(a) within 30 days of service of a notice of agency action requesting payment in full of a delinquent accounts receivable;

(b) within 20 days of service of a notice of agency action in all other adjudicative proceedings; or

(c) before an order is issued by the presiding officer.

(3) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

(a) the decision;

(b) the reason for the decision;

(c) a notice of the right to administrative and judicial review available to the parties; and

(d) the time limits for filing an appeal or requesting reconsideration.

(4) The presiding officer's order shall be based on the facts appearing in the office files (the record) and on the facts presented in evidence at any hearings.

(5) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R21-2-9. Availability of Hearing in Informal Adjudicative Proceedings.

(1) A hearing is permitted in an informal adjudicative proceeding if:

(a) the entity in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in Section R21-2-10; and

(b) participates in an office conference.

R21-2-10. Hearings in Informal Adjudicative Proceedings.

(1) All hearing requests shall be referred to the presiding officer appointed to conduct hearings.

(2) The presiding officer shall give timely notice of the date and time of the hearing to all parties.

(3) Before granting a hearing regarding a delinquent account receivable, the presiding officer appointed to conduct the hearing may decide whether or not the respondent raises a genuine issue as to a material fact. If the presiding officer determines that there is no genuine issue as to a material fact, he may deny the request for hearing, and close the adjudicative proceeding.

(4) If the respondent objects to the denial of the hearing, he may raise that objection as grounds for relief in a request for reconsideration.

(5) There is no genuine issue as to a material fact if:

(a) the evidence gathered by the office and the evidence presented for acceptance by the entity are sufficient to establish the delinquent obligation of the entity under applicable law; and

(b) no other evidence in the record or presented for acceptance by the entity in the course of entity's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.

(6) Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

(a) documented information from agency sources;

(b) failure of the entity to produce upon request of the presiding officer canceled checks, or alternative documentation, as evidence of payments made; or

(c) failure of the entity to produce a record kept by a financial institution, the agency initially servicing the debt, the office or its designee, showing payments made.

R21-2-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the presiding officer unless the entity specifically requests that the hearing be conducted face to face.

R21-2-12. Procedures and Standards for Orders Resulting from Service of a Notice of Office Action.

(1) If the entity agrees with the notice of action, it may

stipulate to the facts and to the amount of the debt and obligation to be paid. A stipulation and order based on that stipulation is prepared by the office for the entity's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

(2) If the entity participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue an order based on that participation.

(3) If the entity requests a hearing and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

(4) If the entity fails to participate as follows, the presiding officer shall issue an order of default, based on whether or not:

(a) the entity fails to participate by presenting relevant information and does not request a hearing in response to the notice of office action;

(b) after proper notice the entity fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

(c) after proper notice the entity fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

(5) The default order is taken for the amount specified in the notice of action which was served on the entity plus accrued interest, penalties and applicable collection costs from the date of the action until paid in full by the entity at the interest rate specified in the default order. The entity may seek to have the default order set aside, in accordance with Section 63-46b-11.

(6) If an entity's request for a hearing is denied under Section R21-2-10, the presiding officer issues an order based upon the information in the office file.

(7) Notwithstanding any prior agreements which sets terms for the payment of the delinquent account receivable, the office reserves the right to intercept state tax refunds or other State payments to the entity to satisfy the debt represented by the delinquent account receivable.

R21-2-13. Conduct of Hearing in Informal Adjudicative Proceedings.

(1) The hearing shall be conducted by a duly qualified presiding officer. No presiding officer shall hear a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

(2) Duties of the presiding officer:

(a) Based upon the notice of office action, objections thereto, if any, and the evidence presented at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the parties.

(b) The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of office action to conform to the evidence.

(3) Rules of Evidence:

(a) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

(b) Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

(c) Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

(d) All relevant evidence shall be admitted.

(e) Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

(f) All parties shall have access to information contained in the office's files and to all materials and information gathered in the hearing, to the extent permitted by law.

(g) Intervention is prohibited.

(4) Rights of the parties: A party appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the party's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before the presiding officer by a representative of the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General.

R21-2-14. Order Review.

Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in the Sections 63-46b-13 and 63-46b-14.

R21-2-15. Reconsideration.

Either the entity or the office may request reconsideration in accordance with Section 63-46b-13 once during an informal adjudicative proceeding.

R21-2-16. Setting Aside Administrative Orders.

(1) The office may set aside an administrative order for any of the following reasons:

(a) a rule or policy was not followed when the order was taken;

(b) the entity was not properly served with a notice of office action;

(c) the entity was not given due process; or

(d) the order has been replaced by a judicial order which covers the same time period.

(2) the office shall notify the entity of its intent to set the order aside by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of office action, the presiding officer determines that the order shall be set aside, the office shall notify the entity.

R21-2-17. Amending Administrative Orders.

(1) The office may amend an order for either of the following reasons:

(a) a clerical mistake was made in the preparation of the order; or

(b) the time periods covered in the order overlap the time periods in another order for the same participants.

(2) The office shall notify the entity of its intent to amend the order by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level

which issued the order.

(3) If after serving the entity with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the entity.

KEY: accounts receivable adjudicative process
August 13, 2002 63-46b-4
Notice of Continuation August 29, 2007 63-46b-5

R21. Administrative Services, Debt Collection.
R21-3. Debt Collection Through Administrative Offset.
R21-3-1. Purpose.

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

R21-3-2. Authority.

This rule is established pursuant to Subsection 63A-8-204(6), which authorizes the Office of State Debt Collection to establish, by rule, an implementation of the debt collection technique of administrative offset.

R21-3-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

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

(2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

R21-3-4. Eligible Accounts Receivable.

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

R21-3-5. Submission of Accounts Receivable to the Division.

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

(a) name of entity;

(b) social security number or federal employer's identification number of the entity;

(c) amount of delinquent account receivable; and

(2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the state's Accounting System.

R21-3-7. Notification and Response.

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

(2)(a) The agency shall verify the delinquent account balance; and

(b) notify the division of the amount to be offset.

(3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

R21-3-8. Offsetting Matched Accounts.

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

(a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the administrative offset; plus

(b) the amount identified in Subsection R21-3-7(3) to satisfy the delinquent account receivable.

R21-3-9. Release of Offset Funds by the Division.

(1) The division shall retain the administrative charge.

(2) The division shall release the offset funds to the agency.

(3) The division shall release the balance of any available funds from the match to the entity.

R21-3-10. Credit of Accounts Receivable.

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

R21-3-11. Administrative Fee.

Pursuant to Section 63A-8-201(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

KEY: accounts receivable administrative offset
August 13, 2002 63A-8-204(6)
Notice of Continuation August 29, 2007

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

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

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of-state travel; and

(2) Section 63A-3-106, which authorizes the Division of Finance to establish per diem rates to meet subsistence expenses for attending official meetings.

R25-7-3. Definitions.

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

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

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

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

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

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

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

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

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

R25-7-4. Eligible Expenses.

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

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

R25-7-5. Approvals.

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

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

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

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

R25-7-6. Reimbursement for Meals.

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

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

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

(a) The daily travel meal allowance for in-state travel is $35.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$8.00
Lunch	$11.00
Dinner	$16.00
Total	$35.00

(b) The daily travel meal allowance for out-of-state travel is $43.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$13.00
Dinner	$20.00
Total	$43.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to $57 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the $57 premium allowance as follows:

(i) If breakfast is provided deduct $14, leaving a premium allowance for lunch and dinner of actual up to $43.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $40.

(iii) If dinner is provided deduct $26, leaving a premium allowance for breakfast and lunch of actual up to $31.

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

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

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

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$35.00	$27.00	$16.00	$0
Out-of-State			
$43.00	$33.00	$20.00	$0

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

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

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

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

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$8.00	$19.00	$35.00
Out-of-State			
$0	$10.00	$23.00	$43.00

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

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

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

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

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

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

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

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

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

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

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

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

R25-7-8. Reimbursement for Lodging.

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

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

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $60 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

Cedar City	$65 plus tax
Layton	$65 plus tax
Logan	$70 plus tax
Moab	$70 plus tax
Ogden	$65 plus tax
Panguitch	$65 plus tax
Park City	$80 plus tax
Heber City, Midway	$80 plus tax
Price	$70 plus tax
Provo, Orem	$65 plus tax
Roosevelt	$75 plus tax
Metropolitan Salt Lake City (Draper to Centerville), Tooele	$80 plus tax
St. George	$70 plus tax
Vernal	$75 plus tax

(3) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location.

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

(5) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

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

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

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

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

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

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

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

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

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

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

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

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

R25-7-9. Reimbursement for Incidentals.

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

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

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

(b) No other gratuities will be reimbursed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) More than thirty days - start over

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

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

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

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

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

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

R25-7-10. Reimbursement for Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 36 cents per mile or 48.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 48.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 36 cents per mile.

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

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

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

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

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

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

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 36 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

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

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

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

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

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

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

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

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

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

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

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

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director.

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

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

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

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

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

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

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

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

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

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

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

August 20, 2007 63A-3-107

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

R58. Agriculture and Food, Animal Industry.
R58-1. Admission and Inspection of Livestock, Poultry, and Other Animals.
R58-1-1. Authority.

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

B. Intent: It is the intent of these rules to eliminate or reduce the spread of diseases among livestock by providing standards to be met in the movement of livestock within the State of Utah, INTRASTATE, and Import movements, INTERSTATE, of livestock, poultry and other animals.

R58-1-2. Definitions.

A. "Accredited Veterinarian" - A veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.

B. "Approved Livestock Market" - A livestock market which meets the requirements as outlined in 9 CFR 78, which is incorporated by reference, Title 4, Chapter 30, Utah Code Unannotated:and R58-7, Utah Administrative Code.

C. Brand Inspection Certificate" - An official form, issued by a government agency or other agency responsible for animal identification in the state of origin, used to transfer title of livestock; listing the identification marks of the animals(s) as well as the consignor and consignee contact information.

D. "Camelidae" - A term referring to members of the family of animals which for the purposes of these rules includes camels, llamas, alpacas, guanacos, and vicunas.

E. "Direct Movement" - Movement in which the animals are not unloaded enroute to their final destination and not commingled with another producer's animals.

F. "Exposed Animal", "Reactor", "Suspect", as defined in the United States Department of Agriculture; Animal and Plant Health Inspection Service and Veterinary Services Brucellosis Eradication Uniform Methods and Rules, and 9 CFR 78.

G. Farm of Origin - For the purposes of this rule, means the farm where the animal was born.

H. "Livestock Market Veterinarian" - A Utah licensed and USDA accredited veterinarian appointed by the Utah Department of Agriculture and Food to work in livestock markets in livestock health and movement matters.

I. "Official Calfhood Vaccinate" - Female bison or cattle of a dairy breed or beef breed vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited Veterinarian with an approved dose of RB51 Vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

J. "Qualified Feedlot" - A feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows or bulls which are either official calfhood vaccinated, or brucellosis unvaccinated animals confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter or another qualified feedlot. All such animals must be kept separate from other animals not destined for slaughter. No Grazing is allowed except, bulls and heifers which have been castrated or spayed upon arrival may be allowed to go for outside grazing prior to return for finish feeding and subsequent slaughter. Spayed heifers must be officially identified with a brand reserved by the state for such animals prior to leaving the feedlot for grazing.

K. "Quarantine" - A verbal or written restriction of movement of animals into or out of an area or premise, issued by a representative of the Utah Department of Agriculture and Food under authority of the Commissioner of Agriculture.

L. "Reportable Disease List" - A list of diseases and conditions developed by the state veterinarian that may affect the health and welfare of the animal industry of the state, reportable to the state veterinarian.

M. "Test Eligible Cattle and Bison" - All cattle or bison six months of age or older, except:

1. Steers, spayed heifers;

2. Official calfhood vaccinates of dairy breeds under 20 months of age and beef breeds under 24 months of age which are not parturient, springers, or post parturient;

3. Official calfhood vaccinates, dairy or beef breeds of any age, which are Utah Native origin.

4. Utah Native Bulls from non-infected herds.

R58-1-3. Intrastate Cattle Movement - Rules - Brucellosis.

A. The State Veterinarian may require brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.

B. Utah Department of Agriculture and Food Livestock Inspectors will help regulate Intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.

R58-1-4. Interstate Importation Standards.

A. No animal, poultry or bird of any species or other animal including wildlife, that is known to be affected with or has been exposed to a contagious, infectious or communicable disease, or that originates from a quarantined area, shall be shipped, transported or moved into the State of Utah until written permission for such entry is first obtained from Veterinary Services Division, United States Department of Agriculture, Animal and Plant Health Inspection Service, and Utah Department of Agriculture and Food, State Veterinarian or Commissioner of Agriculture and Food.

B. Certificate of Veterinary Inspection. An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals and poultry. A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the livestock sanitary official of the state of origin.

C. Import Permits. Livestock, poultry and other animal import permits may be issued by telephone to the consignor, a consignee or to an accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection, and may be obtained from the Utah Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500, Phone (801)538-7164. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA(8732).

R58-1-5. Cattle and Bison.

A. Import Permit and Certificate of Veterinary Inspection.

1. No cattle or bison may be imported into Utah without an import permit issued by the Department of Agriculture and Food. A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state. All cattle and bison, except steers and spayed heifers, must carry some form of individual identification, 1) a brand registered with an official brand agency, or 2) an Electronic ID. ear tag or 3) a registration tattoo. Identification must be listed on the Certificate of Veterinary Inspection. Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection. The import permit number must be listed on the Certificate of Veterinary Inspection. This

includes exhibition cattle. Commuter cattle are exempt as outlined in Subsection R58-1-5(B). Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA(8732).

2. The following cattle are exempted from (1) above:

a. Cattle consigned directly to slaughter at a state or federally inspected slaughter house; and

b. Cattle consigned directly to a State or Federal approved Auction Market.

c. Movements under Subsections R58-1-5(A)(2)(a), and R58-1-5(A)(2)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

3. A brand inspection certificate or proof of ownership, which indicates the intended destination, is required for cattle entering the state under these provisions.

B. Commuter Cattle. Commuter, temporary grazing, cattle may enter Utah or return to Utah after grazing if the following conditions are met.

1. A. commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for current season if the following conditions are met:

a. All cattle shall meet testing requirements as to State classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating States.

b. Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

c. All bulls used in the commuter herd must be tested annually for trichomoniasis as required by the state of Utah.

2. No quarantined, exposed or reactor cattle shall enter Utah.

C. Brucellosis. Prior to importation of cattle or bison into Utah the following health restrictions must be met.

1. Bison and beef breed heifers of vaccination age between four and 12 months must be officially calfhood vaccinated for brucellosis prior to entering Utah. All female bison and beef breed cattle imported to Utah must have a legible brucellosis calfhood vaccination tattoo to be imported or sold into the State of Utah, unless going directly to slaughter, or qualified feedlot to be sold for slaughter, or to an approved livestock market to be sold for slaughter or for vaccination.

a. Bison and beef breed heifers of vaccination age may be vaccinated upon arrival by special permit from the state veterinarian.

2. Test eligible cattle imported from states designated as brucellosis free, that are acquired directly from the farm of origin and moving directly to the farm of destination are not required to be tested for brucellosis prior to movement.

3. Test eligible cattle imported from states designated as brucellosis free, that are acquired through "trading channels", or any "non-farm of origin source" must be tested negative for brucellosis within 30 days prior to entry.

4. All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah.

5. Exceptions to the above testing requirements include Test Eligible Cattle imported to Utah and moving directly to:

a. an approved livestock market, or

b. to a "qualified feedlot", or

c. for immediate slaughter to a slaughtering establishment where federal or state inspection is maintained.

A brand inspection certificate, or proof of ownership, which indicates the intended destination is required for cattle entering the state under these provisions.

6. No reactor cattle, or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to a slaughtering establishment where recognized state or federal meat inspection is maintained. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

7. Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to a slaughtering establishment where state or federal inspection is maintained or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

8. Entry of cattle which have been adult vaccinated is not permitted unless they are for immediate slaughter where state or federal inspection is maintained.

D. Tuberculosis.

A negative test is required within 60 days prior to shipment for all dairy cattle 2 months of age and older and bison 6 months of age and older, breeding cattle originating within a quarantined area or from reactor or exposed herds. Exhibition cattle, and all cattle from an area which is not classified as Tuberculosis Free according to 9 CFR,77 are required to be tested for tuberculosis within 60 days prior to entry to Utah. Rodeo bulls and roping steers must be tested annually during the calendar year for tuberculosis prior to entry to Utah.

E. Scabies.

No cattle affected with, or exposed to scabies shall be trailed, driven, shipped or otherwise moved into Utah. Cattle from a county where scabies have been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection; also the approved vat number and location, if used.

F. Splenic or Tick Fever. No cattle infested with ticks, or exposed to tick infestations shall be shipped, trailed, or driven, or otherwise imported into the State of Utah for any purpose.

G. Exhibitions, Fairs, and Shows.

1. Dairy cattle and cattle for breeding purposes imported for exhibition or show purposes only to be returned to state of origin may enter provided:

a. The cattle are accompanied by the proper Certificate of Veterinary Inspection and import permit.

b. The cattle must have negative tuberculosis T.B. test within 60 days prior to entry.

c. The cattle must have a negative brucellosis test within 30 days prior to entrance. Official Calfhood Vaccinates under test eligible age are acceptable.

H. Trichomoniasis.

All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over nine months of age for Trichomoniasis prior to entry, with some exceptions which are for slaughter, rodeo, exhibition, and dairy bulls kept in confinement.

R58-1-6. Horses, Mules, and Asses.

Horses, mules and asses may be imported into the State of Utah when accompanied by an official Certificate of Veterinary Inspection. The Certificate of Veterinary Inspection must show a negative coggins test within one year previous to the time the certificate was issued. Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-22 or 4-24-23 and Section R58-9-4 is required for re-entering

Utah. Breeding stallions and semen infected with Equine Arteritis Virus must obtain a prior import permit and be handled only on an Approved Facility as required by R58-23. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA (8732).

R58-1-7. Swine.

A. Stocking, Feeding, and Breeding swine. Swine for stocking, breeding, feeding or exhibition may be shipped into the state if the following requirements are met:

1. Import Permit and Certificate of Veterinary Inspection - All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they have not been fed raw garbage. The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, micro chips or other permanent means. An import permit issued by the Department of Agriculture and Food must accompany all hogs, including feeder hogs imported into the state. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA(8743).

2. Test Status. The Certificate of Veterinary Inspection must list the brucellosis, and pseudorabies test status of the animals.

3. Quarantine - All swine shipped into the state for feeding or breeding purposes are subject to an 18 day quarantine beginning with the date of arrival at destination. The department shall be notified by the owner of date of arrival. Release from quarantine shall be given by the department only when satisfied that health conditions are satisfactory.

4. Brucellosis - All breeding and exhibition swine over the age of three months shipped into Utah must pass a negative test for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd or brucellosis free state. A validated brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.

5. Pseudorabies - All breeding, feeding and exhibition swine must pass a negative pseudorabies test within thirty days unless they originate from a recognized qualified pseudorabies free herd or pseudorabies Stage V state. Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 1-71, which is incorporated by reference.

6. Erysipelas - Breeding and exhibition swine shall be immunized with erysipelas bacterin prior to importation.

7. Leptospirosis - All breeding and exhibition swine over four months of age shall be vaccinated for leptospirosis prior to entry. Herd and vaccination status must be stated on the Certificate of Veterinary Inspection.

8. PRRS -- All breeding and exhibition swine 2 months of age and over must be tested negative for Porcine Reproductive and Respiratory Syndrome (PRRS) virus within 30 days prior to entry to Utah or come from a PRRS monitored herd.

B. Immediate Slaughter

1. Swine shipped into Utah for immediate slaughter must not have been fed raw garbage, must be shipped in for immediate slaughter with no diversions, and must be free from any infectious or contagious disease in compliance with 9 CFR 71, which is incorporated by reference.

2. Exhibition swine that have attended livestock shows in Utah shall not be returned to Utah farms but shall go directly to slaughter.

C. Prohibition of Non-domestic and Non-native Suidae and Tayassuidae. Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies. They are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above vaccination and testing requirements. Swine from states with known populations of feral or wild hogs maybe required to be tested for Brucellosis, Pseudorabies, and PRRS prior to entry to Utah.

R58-1-8. Sheep.

A. All sheep imported must be accompanied by a Certificate of Veterinary Inspection and a prior import permit.

1. Blue Tongue. No sheep exhibiting clinical signs of blue tongue may enter Utah.

2. Foot Rot. Sheep must be thoroughly examined for evidence of foot rot and verified that they are free from foot rot.

3. A prior entry permit must be obtained by calling the Utah Department of Agriculture and Food, (801)538-7164. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA (8732).

4. Scrapie. Sheep entering Utah must comply with federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference. Sheep from Scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless a flock eradication and control plan, approved by the State Veterinarian in Utah, has been implemented.

R58-1-9. Poultry.

All poultry imported into the state shall comply with Title 4, Chapter 29 and R58-6 governing poultry which requires a prior permit from the Department of Agriculture and Food. This number can be called for information concerning permits: (801)538-7164. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http:ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA (8732).

R58-1-10. Goats and Camelids.

A. Goats being imported into Utah must meet the following requirements:

1. Dairy goats must have a import permit from the Department of Agriculture and Food (phone 801-538-7164) and, an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd. Thereto; there must be no evidence of Caseous Lymphadenitis (abscesses). Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA(8732).

2. Meat type goats must have a Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

3. Exemption - Goats for slaughter may be shipped into Utah directly to a state or federally inspected slaughtering establishment or to a state and federally approved auction market for sale to such slaughtering establishment

B. Camelids being imported into Utah must meet the following requirements:

1. A Certificate of Veterinary Inspection;
2. Negative tuberculosis test within 60 days;
3. Negative brucellosis within 30 days.
4. Test eligible age for both brucellosis and tuberculosis

shall be 6 months of age or older.

R58-1-11. Psittacine and Passerine Birds and Raptors.

No psittacine or passerine birds raptors offered for sale shall be shipped into the State of Utah unless an import permit is obtained from the Department prior to importation. Request for a import permit must be made by an accredited veterinarian certifying that the birds are free from any symptoms of any infectious, contagious or communicable disease. The request must also state the number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination, all listed on the Certificate of Veterinary Inspection. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA(8732).

R58-1-12. Dogs and Cats.

All dogs, cats and ferrets over three months of age shall be accompanied by an official Certificate of Veterinary Inspection, showing vaccination against rabies. The date of vaccination, name of product used, and expiration date must be given.

R58-1-13. Game and Fur-Bearing Animals.

A. No game or fur bearing animals will be imported into Utah without a prior import permit being obtained from the Department. Each shipment shall be accompanied by an official Certificate of Veterinary Inspection. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or at 1-800-545-USDA(8732).

B. All mink entering Utah shall have originated on ranches or herds where virus enteritis has not been diagnosed within the past three years.

C. Elk brought into the state under regulations governing elk farming and hunting shall meet the importation requirements of R58-18-11 and 12.

R58-1-14. Zoo Animals.

The entry of common zoo animals, as monkeys, apes, baboons, rhinoceros, giraffes, zebras, elephants, to be kept in zoos, or shown at exhibitions is authorized when a import permit, subject to requirements established by the state veterinarian, has been obtained from the Department. Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2156. Import permits may be obtained after hours and weekends by calling current telephone numbers listed online at: http://ag.utah.gov/animind/ahealth.html, or 1-800-545-USDA(8732).

R58-1-15. Wildlife.

It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13. All wildlife imports shall meet the same Department requirements as the domestic animals.

R58-1-16. Duties of Carriers.

Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the State of Utah or through the State except in compliance with the provisions set forth in these rules.

A. Sanitation. All railway cars, trucks, airplanes, and other conveyances used in the transportation of livestock, poultry or other animals shall be maintained in a clean, sanitary condition.

B. Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the Department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry or other animals.

C. Compliance with Laws and Rules. Owners and operators of railroad, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are responsible to see that each consignment is prepared for shipment in keeping with the State and Federal laws and regulations. Certificate of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying attendant in charge of the animals.

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

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

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

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

R70-330-2. Definitions.

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

B. "Properly staffed" means a person or persons on premise available to sell milk, exchange money, and lock and secure the retail store.

C. "Quarterly pathogen testing verification" means a sample from the Raw for Retail batch is aseptically split by the Regulatory agency and tested for the prescribed pathogens at both the independent laboratory and the department laboratory and the results are evaluated and compared.

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

R70-330-3. Permits.

A permit shall be required to sell raw milk for retail. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated. Cow-share programs, as defined in the Utah Dairy Act, shall not be allowed, either in conjunction with a permitted raw for pasteurization dairy, a permitted raw milk for retail dairy, or in lieu of a permit to sell raw milk for retail.

R70-330-4. Building and Premises Requirements.

The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines. In addition to these guidelines, there shall be separate rooms provided for (1) packaging and sealing of raw milk, (2) the washing of returned multi-use containers when applicable, and (3) a sales room for the sale of raw milk in a properly protected area that is not located in any of the milk handling rooms. These rooms shall meet or exceed the construction standards of a Grade A milkhouse. If the Raw for Retail dairy also raises chickens ,or other poultry, for meat and/or eggs, their housing and movement shall be restricted to areas that do not include the milkhouse, milk barn and their immediate surroundings, the corrals and alleys where there is normally cows or goats, and other locations where there is normal cow or goat traffic. They shall also be restricted from areas normally considered traffic areas of the raw milk customers.

R70-330-5. Sanitation and Operating Requirements.

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

B. All milk shall be cooled to 50 degrees F. or less within one hour of the commencement of milking and to 41 degrees F. or less within two hours after the completion of milking.

C. The blend temperature after the first milking and subsequent milkings shall not exceed 50 degrees. Milk not handled in the manner required in this subsection and subsection "B" above shall be deemed adulterated and shall not be sold.

1. All raw for retail farm bulk milk tanks shall be equipped with an approved temperature-recording device, in addition to the indicating thermometer.

2. The recording device shall be operated continuously and be maintained in a properly functioning manner. Circular recording charts shall not overlap.

3. The recording device shall be verified as accurate every six (6) months and documented in a manner acceptable to the department.

4. Recording thermometer charts shall be maintained on the premises for a minimum of six (6) months and available to the department.

5. The recording thermometer shall be installed near the milk storage tank and accessible to the department.

6. The recording thermometer shall comply with the current technical specifications in the Pasteurized Milk Ordinance (PMO) for tank recording thermometers.

7. The recording thermometer charts shall properly identify the producer, date, and signature of the person removing the chart.

D. The temperature of the milk at the time of bottling shall not exceed 41 degrees F.

E. The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged, or at a self owned, properly staffed, retail store. Sanitation and construction requirements of the facilities used as self owned, retail stores shall be the same as those contained in the Wholesome Food Act, Title 4, Chapter 5. Transportation shall be done by the producer with no intervening storage, change of ownership, or loss of physical control. The temperature of the milk shall be maintained at 41 degrees F or below. Each display case shall have a properly calibrated thermometer, and a daily temperature log shall be maintained and made accessible to the Department.

F. Raw Milk block cheese, when held at 55 degrees F. for 60 days or longer, may be sold at retail stores or for wholesale distribution, at locations other than the premise where the milk was produced.

G. Except as provided in part (F) above, all products made from raw milk including, but not limited to, cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah.

H. Milk that has been heat treated, shall not be labeled as "Raw Milk" for retail sale.

I. Inspections of the self owned retail store shall be performed no less than four times per year to insure compliance with the sanitation, construction, and cooling requirements as set forth in the Wholesome Food Act, Title 4, Chapter 5.

R70-330-6. Testing.

A. Raw Milk for Retail Testing.

1. Unpackaged Raw Milk

a. The Department shall collect a representative sample of milk from each Raw for Retail farm bulk tank once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Raw Milk

for Pasteurization as found in the PMO, and in addition shall include added water, and/or other adulterants. Whenever a sample result fails to meet a standard in any of the prescribed categories, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or a contracted approved independent laboratory, meeting PMO/Department standards, and until an inspection can be performed at the facility by the Department. All expenses for the re-sampling, re-testing, and re-inspecting shall be born by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.

b. The standards for testing Somatic Cell Count (SCC) in raw milk for retail shall be, the Somatic Cell Count shall not exceed 350,000 cells per milliliter (ml) for cows, and not to exceed 1,000,000 ml for goats. The requirements for sampling, and the enforcement procedures for SCC shall be the same as those set forth in 1.a. above.

c. The bacterial standards shall be a Standard Plate Count (SPC) of no more than 20,000 per ml. and a coliform count of no more than 10 per ml.

2. Packaged Raw Milk sold on Premise

a. It shall be the responsibility of the Department to collect a representative sample of packaged raw milk once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Grade "A" Pasteurized milk as found in the PMO. Whenever a sample result fails to meet a standard in any of the prescribed categories, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or a contracted approved independent laboratory, meeting PMO/Department standards, and until an inspection can be performed at the facility by the Department. All expenses for the re-sampling, re-testing, and re-inspecting shall be born by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated. When a sample produces a violative Coliform count of more than 10 per mL, the count shall be enumerated and the sample transferred to appropriate laboratory facilities for pathogen testing.

3. Packaged Raw Milk sold at Self-Owned Retail Stores

a. It shall be the responsibility of the producer to have a third party sampler certified by the Department to collect a sample from each batch of milk delivered to the retail store by obtaining one container of milk at the store and submitting it to a certified third party laboratory to be tested for Antibiotic Drug Residue, Standard Plate Count (SPC) and Coliform Count. All containers of milk from the sampled batch shall be withheld from sale until the results of the tests are known. Whenever a sample result exceeds the standard in any of the prescribed categories, the producer shall not allow the milk to enter into commerce and shall dispose of the milk in a manner agreeable to the Department.

b. It shall be the responsibility of the Department to collect at the operator's expense or oversee collection of a representative sample of packaged raw milk once each month for screening for the presence of Listeria monocytogenes, Salmonella, Campylobacter jejuni, and E. Coli 0157:H7. All samples shall be delivered to the State Dairy Testing Laboratory or other laboratories approved by the department. Test results showing any growth or activity shall be considered positive. If any of the screening test results are positive, then a confirmation test shall be performed.

Whenever any of the test results for any the prescribed pathogens are positive, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or contracted approved independent laboratory, meeting PMO/Department standards, and until an inspection can be performed at the facility by the Department. All expenses for the re-sampling, re-testing, and re-inspecting shall be born by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.

c. A hazard analysis and critical control point (HACCP) System including a milk testing procedure for specified pathogens shall be required, and approved by the department, for all raw for retail dairies.

d. The HACCP System shall include plans and policies for initiating and conducting a recall in the event of a positive pathogen test result.

e. The HACCP System shall include the seven following principles:

(i) Conduct hazard analysis

(ii) Determine the critical control points

(iii) Establish critical limits

(iv) Establish monitoring procedures

(v) Establish corrective actions

(vi) Establish verification procedures

(vii) Establish record-keeping and documentation procedures.

f. Prior to the implementation of a HACCP plan, develop, document and implement written Prerequisite Programs (PPs). The HACCP Plan, along with the PPs becomes the HACCP System. Steps to producing the HACCP Plan and System are found in the U.S. National Advisory Committee on Microbiological Criteria for Food (NACMCF) document.

g. The HACCP plan shall identify and address points in the production, distribution, transportation and retail display system where the milk may become contaminated or held in conditions that support the growth of pathogens.

(i) When tests are performed by an independent laboratory, quarterly pathogen testing verification shall be conducted by the Department.

(ii) Independent laboratories shall participate in an annual split sampling program testing the capacity of the pathogen methodology directed by this rule, and results sent to the Department.

h. The producer shall recall all milk from the failed batch that is already in commerce.

i. A database shall be kept and made available for review by both the Utah Department of Agriculture and Food and the Utah Department of Health of all customers, which shall include names, addresses, and telephone numbers of customers, dates of purchases and amounts of milk purchased.

j. If another agency's epidemiological investigation finds probable cause to implicate a raw for retail dairy in a milk born illness outbreak, the Raw for Retail Permit shall be suspended by the Department until such time as milk samples are pathogen free when analyzed by the Department or other Department approved testing laboratories, and until an inspection can be performed at the facility by a Compliance Officer from the Department.

B. Animal Health Tests.

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

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

3. Brucellosis testing. Each animal from which raw milk

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

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

C. Personnel Health.

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

R70-330-7. Packaging and Labeling.

A. Label Requirements.

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

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

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

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

4. Nutritional labeling information when applicable.

5. The phrase: "Raw milk, no matter how carefully produced, may be unsafe.", shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one half inch.

6. The shelf life labeling of bottled raw milk shall include a pull date, expiration date, or best-if-used-by date, and shall be displayed and clearly visible on raw milk. Raw milk shall not be sold after the pull date, expiration date, or best-if-used-by date has expired, and the date shall not be more than nine days after packaging.

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

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

KEY: dairy inspection, raw milk
August 7, 2007 4-3-2
Notice of Continuation March 16, 2006

R70. Agriculture and Food, Regulatory Services.
R70-550. Utah Inland Shellfish Safety Program.
R70-550-1. Authority.

This rule is promulgated by the Division of Regulatory Services, within the Department of Agriculture and Food under authority of Section 4-5-17.

R70-550-2. Adopt by Reference.

Adoption of USPHS Ordinance; National Shellfish Safety Program, Model Ordinance. The Interstate shellfish shipper model ordinance: 2003 edition Recommendations of the United States Public Health Service/Food and Drug Administration, is hereby adopted and incorporated by reference within this rule.

KEY: interstate shell fish safety
August 7, 2007 4-5-17

R70. Agriculture and Food, Regulatory Services.
R70-560. Inspection and Regulation of Cottage Food Production Operations.
R70-560-1. Authority and Purpose.

(1) Authority. Promulgated under authority of Title 4, Chapter 5, Section 9.5, Utah Code Annotated.

(2) Purpose. The Department shall adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.

(3) Adopted and Referenced. The Utah Department of Agriculture and Food hereby adopts and references the applicable provisions of the Food Protection Rule, Utah Administrative Code Rule R70-530 issued by The Utah Department of Agriculture and Food, with specific exemptions as provided by Section 4-5-9.5, Utah Code Annotated.

R70-560-2. Definitions.

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

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

(2) "Food Processing Plant" does not include a Cottage Food Production Operation.

(3) "Section 26A-1-114" means Title 26A, Chapter 1, Section 114, Utah Code Annotated.

(4) "Section 26-15a-102" means Title 26, Chapter 15a, Section 102, Utah Code Annotated.

R70-560-3. Approval of Food.

(1) Prior to producing a food, the operator of a cottage food production operation shall:

(a) At the discretion of the Department, provide written confirmation from a Department approved food laboratory or process authority that the food is not potentially hazardous; and

(b) Receive approval from the Department to produce the food.

(2) A cottage food production operation may only sell Department approved foods to the public.

(3) When food includes fruits or vegetables grown by the operator of a cottage food production operation, the operator must have a current private pesticide applicator certification issued by the Department under Title 4, Chapter 14, Utah Code Annotated.

R70-560-4. Production Requirements.

(1) A cottage food production operation shall:

(a) Ensure that each operator holds a valid food handler's permit;

(b) Use finished and cleanable surfaces;

(c) Maintain acceptable sanitary standards and practices;

(d) Provide separate storage from domestic storage, including refrigerated storage;

(e) Provide written evidence of compliance with zoning, building and other regulatory codes;

(f) Provide for annual water testing if not connected to a public water system; and

(g) Keep a sample of each food for 14 days. The samples shall be labeled with the production date and time.

(2) A cottage food production operation shall comply with R70-530, except that it shall not be required to:

(a) Have commercial surfaces such as stainless steel counters or cabinets;

(b) Have a commercial grade sink, dishwasher or oven;

(c) Have a separate kitchen; or

(d) Submit plans and specifications before construction or remodeling;

(3) A cottage food production operation is prohibited from all of the following:

(a) Conducting domestic activities in the kitchen when producing food;

(b) Allowing pets in the kitchen;

(c) Allowing free-roaming pets in the residence;

(d) Washing out or cleaning pet cages, pans and similar items in the kitchen; and

(e) Allowing entry of non-employees into the kitchen while producing food.

(4) A cottage food must be prepared by following the recipe used to prepare the food when it was submitted for the approval testing required in Subsection R70-560-3(1). When a process authority has recommended or stipulated production processes or criteria for a food, these must be followed when the food is produced. The recipe and process authority recommendations and stipulations shall be available in the facility for review by the department.

R70-560-5. Inspections, Registration and Investigations.

(1) The Department shall inspect a cottage food production operation:

(a) Prior to issuing a registration for the cottage food production operation; and

(b) If the Department has reason to believe the cottage food production operation is in violation of this chapter, or administrative rule, adopted pursuant to this section, or is operating in an unsanitary manner.

(2) A cottage food production operation must register with the Department as a food establishment pursuant to Rule R70-540 and pay the required fee.

(3) Notwithstanding the provisions of Rule R70-540, the Department shall issue a registration to an applicant for a cottage food production operation if the applicant:

(a) Applies for the registration;

(b) Passes the inspection required by Subsection R70-560-5(1);

(c) Pays the fee required by the department;

(d) Meets the requirements of this section;

(e) Provides written evidence of compliance with local zoning and business codes;

(f) Complies with all other, state, municipal, county codes, including plumbing codes, electrical codes and safety codes.

(4) The registration issued under Rule R70-540 shall be displayed at the cottage food production operation. A copy of the registration shall be displayed at farmers markets, roadside stands and other places at which the operator sells food from a fixed structure that is permanent or temporary and which is owned, rented or leased by the operator of the cottage food production operation.

R70-560-6. Cottage Food Labeling.

(1) A cottage food production operation shall:

(a) Properly label all foods in accordance with state and federal law, including 21 CFR 1 - 199;

(2) Label information shall include:

(a) The name specified by regulation or, in the absence thereof, the name commonly used for that food or an adequately descriptive name;

(b) A list of ingredients in descending order of predominance by weight, when the food is made from two or more ingredients;

(c) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;

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

(e) The name and place of business of the cottage food production operation;

(f) The telephone number of the cottage food production operation;

(g) Nutritional labeling unless the product qualifies for an exemption; and

(h) The words "Home Produced" in bold and conspicuous 12 point type on the principal display panel.

R70-560-7. Food Distribution and Storage.

(1) Food shall be obtained from sources that comply with the law.

(2) An ingredient used in a cottage food production operation, that is from a hermetically-sealed container, must have been produced at a food processing plant that is regulated by the appropriate food regulatory agency with jurisdiction over the plant.

(3) A food offered for sale shall be safe, unadulterated, and honestly presented.

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

(b) Food or color additives, colored over-wraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.

(c) Food may not contain unapproved food additives, additives in unsafe amounts, or additives that exceed the amount necessary to achieve the needed effect.

(d) Food shall be protected from contamination, including contamination from chemical and pesticide hazards.

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

(5) Food that is unsafe, adulterated, or not honestly presented shall be discarded.

(6) Except for unprocessed raw agricultural products, foods shall not be displayed or stored on the ground.

(7) Ingredients used in a cottage food shall be in good condition, unspoiled and otherwise unadulterated. Ingredients cannot be used past the expiration date on the container if produced at a regulated food processing facility. Other ingredients may not be used if over 9 months old.

R70-560-8. Regulatory Jurisdiction.

(1) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) Does not have jurisdiction to regulate the production of food at a cottage food production operation, operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) Does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(2) A food service establishment as defined in Section 26-15a-102, may not use a product produced in a cottage food operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

(3) Interstate sales of cottage food production operation produced foods are prohibited.

R70-560-9. Enforcement and Penalties.

A violation of any portion of this rule may result in civil or criminal action pursuant to Sections 4-2-12, 14 and 15, Utah Code Annotated.

KEY: food, cottage food, food establishment registration
August 7, 2007 4-5-9.5

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding one ounce and has a meter which counts the number of pours served.

(10) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(11) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(12) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(13) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.

(15) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(16) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(17) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(18) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(19) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(20) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(21) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

R81-1-3. General Policies.

(1) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor that is at least 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(2) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(3) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(4) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy, or on the department's website at http://www.abc.utah.gov.

(5) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(6) Returned Checks.

(a) The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (6)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or

termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (6)(b), the department shall require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis under the following guidelines:

(i) Except as provided in Subsection (6)(c)(ii):

(A) two or more returned checks received by the department from or on behalf of a licensee, permittee, or package agent within three consecutive months shall require that the licensee, permittee, or package agent be on "cash only" status for a period of three to six consecutive months from the date the department received notice of the second returned check;

(B) one returned check received by the department from or on behalf of a licensee, permittee, or package agent within six consecutive months after the licensee, permittee, or package agent has come off "cash only" status shall require that the licensee, permittee, or package agent be returned to "cash only" status for an additional period of six to 12 consecutive months from the date the department received notice of the returned check;

(C) one returned check received by the department from or on behalf of a licensee, permittee, or package agent at any time after the licensee, permittee, or package agent has come off "cash only" status for a second time shall require that the licensee, permittee, or package agent be on "cash only" for an additional period of 12 to 24 consecutive months from the date the department received notice of the returned check;

(D) a returned check received by the department from or on behalf of an applicant for a license, permit, or package agency for either an application or initial license or permit fee shall require that the applicant be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(E) a returned check received by the department from or on behalf of a licensee or permittee for a license or permit renewal fee shall require that the licensee or permittee be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to18 consecutive months from the date the department received notice of the returned check;

(iii) in instances where the department has discretion with respect to the length of time a licensee, permittee, or package agent is on "cash only" status, the department may take into account:

(A) the dollar amount of the returned check(s);

(B) the length of time required to collect the amount owed the department;

(C) the number of returned checks received by the department during the period in question; and

(D) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

(iv) for purposes of this Subsection (6)(c), a licensee, permittee, or package agent that is on "cash only" status may make payments to the department in cash, with a cashier's check, or with a current debit card with an authorized pin number; and

(v) the department may immediately remove a licensee, permittee, or package agent from "cash only" status if it is determined that the cause of the returned check was due to bank error, and was not the fault of the person tendering the check.

(d) In addition to the remedies listed in Subsections (6)(a), (b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

(7) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance

with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of any type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of any type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of any type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of any type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of any type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of any type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day

suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(ii) Second occurrence of any type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(iii) More than two occurrences of any type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of any type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X	X		
2nd		100 to 500		
3rd		200 to 500	1 to 5	
Over 3		500 to 25,000	6 to	X
Moderate				
1st	X	to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		2,000 to 25,000	15 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
Over 2		9,000 to 25,000	15 to	X
Grave				
1st		1,000 to 25,000	10 to	X
Over 1		3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days
Minor			
1st	X	X	
2nd		to 25	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st		X to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 100	5 to 30
2nd		to 150	10 to 90
Over 2		to 500	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and whether the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (2007 edition) and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Presiding Officers.

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting

the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent is found guilty of the alleged violation, and forfeiture of any

compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause

an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give

persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63-46b-2(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-10(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action

and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63-46b-16, -17, and -18.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63-46b-16, -17, and -18, and Section 32A-1-120.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed one ounce; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing,

calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed one ounce.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands of liquor dispensed through the dispensing system;

(ii) beginning and ending meter readings by brand or sales price level and the number of portions dispensed through the dispensing system;

(iii) number of portions sold by brand or sales price level; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances by brand or sales price level.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than one ounce of primary spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-10. Wine Dispensing.

(1) Each licensee shall keep daily records that compare the number of portions of wine by the glass dispensed to the number of portions sold. These records shall indicate:

(a) the brands of each wine dispensed by the glass;

(b) the portion size, not to exceed five ounces per portion, and the number of portions dispensed by the glass of each wine by brand and sales price level;

(c) the portion size and number of portions sold by the glass of each wine by brand and sales price level; and

(d) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

These records must be made available for inspection and audit by the department or law enforcement.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(37) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(48) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either

consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9 and R81-1-10 must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be made to the appropriate official specified in paragraph (3)

above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the

individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of

alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(25), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63-46a-3 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing

electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63-46a-3 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house"

provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department=s standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department=s current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and

designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to

regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or class D private club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or class D private club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32A-1-105(49).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(50).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or class D private club.

(b) A tavern or class D private club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or class D private club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or class D private club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or class D private club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies; and

(b) 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons that have been convicted of certain criminal offenses from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least one year, shall submit a criminal history background report from the Utah Bureau of Criminal Identification, Department of Public Safety.

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than one year, shall submit a criminal history background report from the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a criminal history background report from the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to file a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit

under 32A-10-301 to -306 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(b) An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than providing the required F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant attests in writing that all request(s) for any required F.B.I. criminal history background report(s) have been submitted to the F.B.I, and provides the following information and documentation:

(A) the date the request(s) were submitted to the F.B.I.

(B) a copy of the written request(s) submitted to the F.B.I.

(C) a copy of the fingerprint card(s) submitted to the F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

KEY: alcoholic beverages

August 27, 2007	**32A-1-107**
Notice of Continuation August 31, 2006	**32A-1-119(5)(c)**
	32A-3-103(1)(a)
	32A-4-103(1)(a)
	32A-4-106(22)
	32A-4-203(1)(a)
	32A-4-304(1)(a)
	32A-4-307(22)
	32A-4-401(1)(a)
	32A-4-403(1)(a)
	32A-5-103(1)(a)
	32A-5-107(40)
	32A-6-103(2)(a)
	32A-7-103(2)(a)
	32A-7-106(5)
	32A-8-103(1)(a)
	32A-8-503(1)(a)
	32A-9-103(1)(a)
	32A-10-203(1)(a)
	32A-10-206(14)
	32A-10-303(1)(a)
	32A-10-306(5)
	32A-11-103(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-3a. Architect Licensing Act Rule.
R156-3a-101. Title.

This rule is known as the "Architect Licensing Act Rule".

R156-3a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1, 3a, and 22 or this rule:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the IDP Committee created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "Divisions of the ARE" mean:

(a) pre-design (PD): satisfied by passing Division A between 1983 and 1996;

(b) site planning (SP): satisfied by passing both Division B- Written and Division B-Graphic between 1988 and 1996; or by passing Division B between 1983 and 1987;

(c) building planning (BP): satisfied by passing Division C between 1983 and 1996;

(d) building technology (BT): satisfied by passing Division C between 1983 and 1996;

(e) general structures (GS): satisfied by passing Division D/F between 1988 and 1996; or by passing both Division D and Division F between 1983 and 1987;

(f) lateral forces (LF): satisfied by passing Division E between 1983 and 1996;

(g) mechanical and electrical systems (ME): satisfied by passing Division G between 1983 and 1996;

(h) materials and methods (MM): satisfied by passing Division H between 1983 and 1996; and

(i) construction documents and services (CD): satisfied by passing Division I between 1983 and 1996.

(5) "EESA" means the Education Evaluation Services for Architects.

(6) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(7) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture as used in Subsection 58-3a-102(6) which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is in an area where the licensee has demonstrated competence by adequate education, training and experience;

(c) arises from and is directly related to work performed in the licensed profession;

(d) is substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and

(e) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsection 58-3a-603(1) or Subsection 58-22-603(1).

(8) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(2) means a NCARB approved training program.

(9) "NAAB" means the National Architectural Accrediting Board.

(10) "NCARB" means the National Council of Architectural Registration Boards.

(11) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Intern Development Program.

(12) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any state, district, territory of the United States, or any foreign country who issues licenses for architects, and whose licensure requirements include:

(a) a bachelors or post graduate degree in architecture or equivalent education as set forth in Subsection R156-3a-301(2);

(b) a program of diversified practical experience as set forth in Subsection R156-3a-102(10), or an equivalent training program; and

(c) passing the ARE or passing a professional architecture examination that is equivalent to the ARE.

(13) "Responsible charge" as used in Subsections 58-3a-102(7), 58-3a-302(2)(d)(iv) and 58-3a-304(6) means direct control and management by a principal over the practice of architecture by an organization.

(14) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(15) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-3a-502.

R156-3a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 3a.

R156-3a-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.

R156-3a-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the IDP Committee as an advisory peer committee to the Architect Licensing Board consisting of five members as follows:

(a) one State IDP Coordinator;

(b) one Education Coordinator;

(c) two Intern IDP Coordinators; and

(d) one member of the Utah Architects Licensing Board.

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The duties and responsibilities of the committee shall include assisting the board in its duties, functions, and responsibilities defined in Subsection 58-1-202(1)(e) as follows:

(a) promote an awareness of IDP by holding meetings and seminars on IDP;

(b) establish a network of sponsors and advisors for IDP interns;

(c) encourage firms to support IDP;

(d) act as a resource to respond to questions on IDP received from advisors, sponsors, and interns; and

(e) report to the board as directed.

R156-3a-301. Qualifications for Licensure - Architecture Program Criteria.

In accordance with Subsection 58-3a-302(1)(d), the architecture program criteria are established as follows.

(1) The architecture program shall be accredited by either the National Architectural Accrediting Board (NAAB), or the Canadian Architectural Certification Board (CACB), or an architectural program equivalent to a NAAB accredited program.

(2) Equivalency shall be documented by submitting one of the following:

(a) if educated in a foreign country, a comprehensive report prepared by EESA stating that the applicant has successfully completed an educational program that is equivalent to the NAAB accredited educational program; or

(b) a current NCARB Council Record.

R156-3a-302. Qualifications for Licensure - Program of Diversified Practical Experience.

In accordance with Subsection 58-3a-302(1)(e), an applicant shall establish completion of a program of diversified practical experience requirement by submitting documentation of:

(1) IDP;

(2) current licensure in a recognized jurisdiction; or

(3) a current NCARB Council Record.

R156-3a-303. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-3a-302(1)(f), an applicant for licensure as an architect shall either submit documentation of a current NCARB Council Record or pass the following examinations:

(a) as part of the application for licensure, pass all questions on the open book, take home Utah Law and Rule Examination; and

(b) all divisions of the ARE as defined in Subsection R156-3a-102(4) with a passing score as established by NCARB.

(2) In accordance with Subsection 58-3a-302(2)(e), an applicant for licensure by endorsement shall either submit documentation of a current NCARB Council Record or pass the following examinations:

(a) as part of the application for licensure, pass all questions on the open book, take home Utah Law and Rule Examination; and

(b) all divisions of the ARE as defined in Subsection R156-3a-102(4) with a passing score as established by NCARB.

R156-3a-304. Continuing Professional Education for Architects.

In accordance with Section 58-3a-303.5, the qualifying continuing professional education standards for architects are established as follows:

(1) During each two year period ending on December 31 of each odd numbered year, a licensed architect shall be required to complete not less than 16 hours of qualified professional education directly related to the licensee's professional practice.

(a) Transition requirement. During the two year period ending on December 31, 2007, an architect shall be required to complete five hours of qualifying continuing professional education.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable, clear statement of purpose and defined objective for the educational program directly related to the practice of an architect and directly related to topics involving the public health, safety, and welfare of architectural practice and the ethical standards of architectural practice;

(i) health, safety, welfare and ethical standards as used in this subsection are defined to include the following:

(A) The definition of "health" shall include, but not be limited to, aspects of architecture that have salutary effects among users of buildings or sites and that address environmental issues. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

(B) The definition of "safety" shall include, but not be limited to, aspects of architecture intended to limit or prevent accidental injury or death among users of buildings or construction sites. Examples include fire-rated egress enclosures, automatic sprinkler systems, stairs with correct rise-to-run proportions, and accommodations for users with disabilities.

(C) The definition of "welfare" shall include, but not be limited to, aspects of architecture that consist of values that may be spiritual, physical, aesthetic and monetary in nature. Examples include spaces that afford natural light or views of nature or whose proportions, color or materials engender positive emotional responses from its users.

(D) The definition of "ethical standards of architectural practice" shall include, but not be limited to the NCARB rules of conduct specified in Subsection R156-3a-502(4).

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

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

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

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

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

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

(b) a maximum of eight hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of architecture, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of three hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of architecture and submitted for publication; and

(d) unlimited hours may be recognized for continuing professional education that is provided via the Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

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

(6) If a licensee exceeds the 16 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 8 hours of qualified continuing professional education into the next two year period.

(7) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing professional education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(8) Any licensee who fails to timely complete the continuing professional education hours required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement shall be required to complete 16 hours of continuing professional education complying with these rules within two years prior to the date of application for reinstatement of licensure.

R156-3a-305. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 3a is established by rule in Section R156-1-308.

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

R156-3a-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), and 58-3a-501, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of architecture as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permits any person to use his license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-3a-502(1)(i)(iii).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report, or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or

(b) a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise reasonable charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the August 2002 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference.

R156-3a-601. Architectural Seal - Requirements.

In accordance with Section 58-3a-601, all final plans and specifications of buildings erected in this state, prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(1) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(2) Each seal shall include the licensee's name, license number, "State of Utah", and "Licensed Architect".

(3) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(4) Each original set of final plans and specifications, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(5) A seal may be a wet stamp, embossed, or electronically produced.

(6) Copies of the original set of plans and specifications which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

KEY: architects, licensing

August 23, 2007	**58-3a-101**
Notice of Continuation April 10, 2006	**58-3a-303.5**
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(31)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Subsection R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(31)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(31)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument by a physician to shave the upper layers of the stratum corneum.

(8) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(9) "Exfoliation" means the sloughing off of non-living skin cells by very superficial and non-invasive means.

(10) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(31)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(11) "Galvanic current" means a constant low-voltage direct current.

(12) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act.

(13) "Hydrotherapy", as used in Subsection 58-11a-102(27)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(14) "Indirect supervision" means the supervising instructor is present within the facility in which the person being supervised is providing services, and is available to provide immediate face to face communication with the person being supervised.

(15) "Limited chemical exfoliation" means an extremely gentle chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(16) "Lymphatic massage", as used in Subsections 58-11a-102(31)(a)(G)(i) and 58-11a-302(11)(C), means a method using light pressure applied by manual or other means to the skin in specific maneuvers to promote drainage of the lymphatic fluid through the tissue.

(17) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(18) "Microdermabrasion", as used in Subsection 58-11a-102(31)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(19) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(20) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(21) "Supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter in the treatment of a patient of the health care practitioner while:

(a) the health care practitioner is physically located on the premises and is immediately available to care for the patient if complications arise; or

(b) the patient is physically located on the premises of the health care practitioner.

(22) "TCA acid" means trichloroacetic acid.

(23) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

(24) "UCBIL Examination" means the Utah Cosmetologist/Barber Instructor Licensing Examination, the instructor examination for all disciplines addressed in this chapter and adopted under Section R156-11a-302a.

R156-11a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 11a.

R156-11a-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.

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(14), (15), (16), and (17), until the application is

approved and a license issued.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the various examination requirements for licensure are established as follows:

(1) A single examination is adopted for instructors of all disciplines addressed in this chapter. That examination is to be known as the "Utah Cosmetologist/Barber Instructor Licensing Examination (UCBIL).

(2) Applicants for licensure as a barber shall:

(a) pass the Utah Barber Theory Examination with a score of at least 75%; and

(b) pass the Utah Barber Practical Examination with a score of at least 75%; or

(c) pass any other barber theory and practical examination approved by the licensing authority of another state.

(3) Applicants for licensure as a barber instructor shall:

(a) pass the UCBIL Examination with a score of at least 75%; or

(b) pass any equivalent instructor examination approved by the licensing authority of another state.

(4) Applicants for licensure as a cosmetologist/barber shall:

(a) pass the Utah Cosmetology/Barber Theory Examination with a score of at least 75%; and

(b) pass the Utah Cosmetology/Barber Practical Examination with a score of at least 75%; or

(c) pass any cosmetology/barber theory and practical examination approved by the licensing authority of another state.

(5) Applicants for licensure as a cosmetologist/barber instructor shall:

(a) pass the UCBIL Examination with a score of at least 75%; or

(b) pass any equivalent instructor examination approved by the licensing authority of another state.

(6) Applicants for licensure as an electrologist shall:

(a) pass the Utah Electrologist Theory Examination with a score of at least 75%; and

(b) pass the Utah Electrologist Practical Examination with a score of at least 75%; or

(c) pass any electrologist theory and practical examination approved by the licensing authority of another state.

(7) Applicants for licensure as an electrologist instructor shall:

(a) pass the UCBIL Examination with a score of at least 75%; or

(b) pass any equivalent examination approved by the licensing authority of another state.

(8) Applicants for licensure as a basic esthetician shall:

(a) pass the Utah Esthetics Theory Examination with a score of at least 75%; and

(b) pass the Utah Esthetics Practical Examination with a score of at least 75%; or

(c) pass an esthetics theory and practical examination approved by the licensing authority of another state.

(9) Applicants for licensure as a master esthetician shall:

(a) pass the Utah Master Esthetician Theory Examination with a score of at least 75%; and

(b) pass the Utah Master Esthetician Practical Examination with a score of at least 75%; or

(c) pass a master esthetician theory and practical examination approved by the licensing authority of another state.

(10) Applicants for licensure as an esthetician instructor shall:

(a) pass the UCBIL Examination with a score of at least 75%; or

(b) pass any equivalent instructor examination approved by the licensing authority of another state.

(11) Applicants for licensure as a nail technician shall:

(a) pass the Utah Nail Technician Theory Examination with a score of at least 75%; and

(b) pass the Utah Nail Technician Practical Examination with a score of at least 75%; or

(c) pass a nail technician theory and practical examination approved by the licensing authority of another state.

(12) Applicants for licensure as a nail technician instructor shall:

(a) pass the UCBIL Examination with a score of at least 75%; or

(b) pass any equivalent instructor examination approved by the licensing authority of another state.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308.

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

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a medical device without the supervision of a licensed health care practitioner acting in the scope of the licensee's practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(12) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(13) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by

performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: $200

Second Offense: $300

(2) Knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: $400

Second Offense: $800

(3) Using as a nail technician a solution composed of at least 10% methyl methacrylete on a client in violation of Subsection 58-11a-501(4)

First Offense: $500

Second Offense: $1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

(5) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(6) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A new school shall:

(a) submit an application for candidate status for accreditation to an accrediting commission within one month of receiving licensure from the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school and shall provide evidence of receiving candidate status from the accrediting commission to the Division within 12 months of the date the school was licensed;

(b) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1; and

(c) comply with all applicable accreditation standards during the pendency of its application for accreditation status.

(4) The school shall have 24 months following the date of receiving candidate status to be approved for accreditation.

(5) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63-46b-20.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iii), 58-11a-302(13)(c)(iii) and 58-11a-302(16)(c)(iii), the standards for the physical facility of a barber, cosmetology/barber, electrology, esthetics, or nail technology schools shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Salon.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iv), 58-11-302(13)(c)(iii), and 58-11a-302(16)(c)(iii), when a barbershop or professional salon is under the same ownership or is otherwise associated with a school, the barbershop or salon shall maintain separate operations for the school.

(2) If the barbershop or salon is located in the same building as a school, separate entrances and visitor reception areas are required. The salon or shop shall also use separate public information releases, advertisements and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), 58-11a-302(6)(c)(iii) and (iv), 58-11a-302(9)(c)(iii) and (v), 58-11a-302(13)(c)(iii) and (iv), 58-11a-302(16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who will be responsible to maintain the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including

the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(3) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(4) Schools shall keep a daily written record of student attendance.

(5) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

(6) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

(3) Hours obtained while enrolled in a barber, cosmetology, electrology, esthetics, master esthetics, or nail technology apprenticeship may not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall contain, as a minimum:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract for each student and shall provide a copy of the contract to the division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), the staff requirement for barber, cosmetology/barber, electrology, esthetics and nail technology school shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), 58-11a-302(5)(e) and (f), 58-11a-302(8)(e) and (f), 58-11a-302(12)(e) and (f), and 58-11a-302(15)(e) and (f), barber, cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(21)(b), an individual licensed as a cosmetology/barbering instructor may teach barbering, basic esthetics or nail technology in a licensed barber, cosmetology/barber school or an approved barber, cosmetology/barber, basic esthetics or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection R156-11a-609(1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b), 58-11a-102(31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

(a) phenol;

(b) bichloroacetic acid;

(c) resorcinol, except as provided in Subsection (4)(b); and

(d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%; and

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;

(iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsection 58-11a-102(31)(a)(i)(G)(II), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets, and any tools that invade the skin or living cells are prohibited except for:

(a) advanced pedicures; and

(b) advanced extraction of impurities from the skin.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(4) To be approved, a microdermabrasion machine must meet the following criteria:

(a) specifically labeled for cosmetic or esthetic purposes;

(b) closed-loop vacuum system that uses a tissue retention device; and

(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(b) and 58-11a-102(31)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

(a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and

(b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.

In accordance with Subsection 58-11a-302(3), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:

(1) introduction consisting of:
(a) history of barbering,
(b) an overview of the barber curriculum;
(2) personal, client and shop safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures;
(c) health risks to the barber;
(3) business and shop management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations;
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies;
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the hair and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination;
(e) infection control;
(7) implements, tools and equipment for barbering;
(8) first aid;
(9) anatomy;
(10) basic science of barbering;
(11) chemistry for barbering;
(12) analysis of the hair and scalp;
(13) properties of the hair, skin, and scalp;
(14) basic hairstyling and hair cutting including:
(a) draping;
(b) clipper variations;
(c) scissor cutting; and
(d) wet and thermal styling;
(15) shaving and razor cutting;
(16) mustache and beard design;
(17) elective topics; and
(18) the Utah Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:

(1) introduction consisting of:
(a) the history of electrology; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the electrologist;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice and liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of hair and skin;
(7) implements, tools, and equipment for electrology;
(8) first aid;
(9) anatomy;
(10) basic science of electrology;
(11) analysis of the skin;
(12) physiology of hair and skin;
(13) medical definitions including:
(a) dermatology;
(b) endrocrinology;
(c) angiology; and
(d) neurology;
(14) evaluating the characteristics of skin;
(15) evaluating the characteristics of hair;

(16) medications affecting hair growth including:
(a) over-the-counter preparations;
(b) anesthetics; and
(c) prescription medications;
(17) contraindications;
(18) disease and blood-borne pathogens control including:
(a) pathogenic bacteria and non-bacterial causes; and
(b) American Electrology Association (AEA) infection control standards;
(19) principles of electricity and equipment including:
(a) types of electrical currents, their measurements and classifications;
(b) Food and Drug Administration (FDA) approved needle type epilation equipment;
(c) FDA approved hair removal devices; and
(d) epilator operation and care;
(20) modalities for need type electrolysis including:
(a) needle/probe types, features, and selection;
(b) insertions, considerations, and accuracy;
(c) galvanic multi needle technique;
(d) thermolysis manual and flash technique;
(e) blend and progressive epilation technique; and
(f) one and two handed techniques;
(21) clinical procedures including:
(a) consultation;
(b) health/medical history;
(c) pre and post treatment skin care;
(d) normal healing skin effects;
(e) tissue injury and complications;
(f) treating ingrown hairs;
(g) face and body treatment;
(h) cosmetic electrology; and
(i) positioning and draping;
(22) elective topics; and
(23) Utah Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the basic esthetician;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising.
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for basic esthetics including;
(a) high frequency or galvanic current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of basic esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) facials, manual and mechanical;
(14) limited chemical exfoliation including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) chemical reactions;
(15) chemistry for basic esthetics;
(16) temporary removal of superfluous hair by waxing;
(17) treatment of the skin;
(18) packs and masks;
(19) Aroma therapy;
(20) application of makeup including:
(a) application of false eyelashes;
(b) arching of the eyebrows; and
(c) tinting of the eyelashes and eyebrows;
(21) medical devices;
(22) cardio pulmonary resuscitation (CPR);
(23) basic facials;
(24) chemistry of cosmetics;
(25) skin treatments, manual and mechanical;
(26) massage of the face and neck;
(27) natural nail manicures and pedicures;
(28) elective topics; and
(29) Utah Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:
(1) introduction consisting of:
(a) history of master esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the master esthetician;
(3) business and salon management consisting of:
(a) developing clients;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) advertising; and
(f) public relations;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) the human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) contamination; and
(e) infection controls;
(7) implements, tools and equipment for master esthetics;
(8) first aid;
(9) anatomy;
(10) basic science of master esthetics;
(11) analysis of the skin;
(12) physiology of the skin;

(13) advanced facials, manual and mechanical;
(14) chemistry for master esthetics;
(15) advanced chemical exfoliation, including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) reactions;
(16) temporary removal of superfluous hair by waxing and advanced waxing;
(17) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:
(a) 40 hours of training in anatomy and physiology of the lymphatic system;
(b) 70 applications of one hour each in manual lymphatic massage of the full body; and
(c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy;
(18) advanced pedicures;
(19) advanced Aroma therapy;
(20) the aging process and its damage to the skin;
(21) medical devices;
(22) cardio pulmonary resuscitation (CPR) training;
(23) hydrotherapy;
(24) advanced mechanical and electrical devices including instruction in using:
(a) sanding and microdermabrasion techniques;
(b) galvanic or high-frequency current for treatment of the skin;
(c) devices equipped with a brush to cleanse the skin;
(d) devices that apply a mixture of steam and ozone to the skin;
(e) devices that spray water and other liquids on the skin; and
(f) any other mechanical devices, esthetic preparations or procedures approved by the division in collaboration with the board for the care and treatment of the skin;
(25) elective topics; and
(26) Utah Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of nail technology; and
(b) an overview of the curriculum;
(2) personal, client and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the nail technician;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the nails and skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools and equipment for nail technology;
(8) first aid;
(9) anatomy;
(10) basic science for nail technology;
(11) theory of basic manicuring including hand and arm massage;
(12) physiology of the skin and nails;
(13) chemistry for nail technology;
(14) artificial nail techniques consisting of:
(a) wraps;
(b) nail tips;
(c) gel nails;
(d) sculptured acrylic nails; and
(e) nail art;
(15) pedicures and massaging the lower leg and foot;
(16) elective topics; and
(17) Utah Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 2,000 hours of instruction in all of the following subject areas:
(1) introduction consisting of:
(a) history of cosmetology/barbering, esthetics, nail technology; and
(b) overview of the cosmetology/barber curriculum;
(2) personal, client and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures;
(c) health risks to the cosmetologist/barber;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of skin, nails, hair, and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools and equipment for cosmetology, barbering, basic esthetics and nail technology;
(8) first aid;
(9) anatomy;
(10) basic science of cosmetology/barbering;
(11) analysis of the skin, hair and scalp;
(12) physiology of the human body;
(13) electricity and light therapy;
(14) limited chemical exfoliation;
(15) chemistry for cosmetology/barbering, basic esthetics and nail technology;
(16) temporary removal of superfluous hair;
(17) properties of the hair, skin and scalp;
(18) basic hairstyling including:
(a) wet and thermal styling;
(b) permanent waving;
(c) hair coloring;

(d) chemical hair relaxing; and
(e) thermal hair straightening;
(19) haircuts including:
(a) draping;
(b) clipper variations;
(c) scissor cutting;
(d) shaving; and
(e) wigs and artificial hair;
(20) razor cutting for men;
(21) mustache and beard design;
(22) elective topics; and
(23) Utah Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Barber, Cosmetology/Barber, Master Esthetics, Electrology, and Nail Technology Instructors School.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (9)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved barber, cosmetology/barber, basic esthetics, master esthetics, electrology and nail technology instructor school shall consist of the number of hours of instruction required in the subsections identified above in the following subject areas:

(1) motivation and the learning process;
(2) teacher preparation;
(3) teaching methods;
(4) classroom management;
(5) testing;
(6) instructional evaluation;
(7) laws, rules and regulations; and
(8) Utah Cosmetology/Barber, Master Esthetics, Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1250 hours using the curriculum defined in Section R156-11a-700.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 1250 hours of apprentice training.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship include:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703:

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(9) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school shall not be used to satisfy the required 375 hours of apprentice training.

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern must have completed at least 1000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

(a) draping;

(b) shampooing;

(c) roller setting;

(d) blow drying styling;

(e) applying color;

(f) removing color by rinsing and shampooing;

(g) removing permanent chemicals;

(h) removing permanent rods;

(i) removing rollers;

(j) applying temporary rinses, reconditioners, and rebuilders;

(k) acting as receptionists;

(l) doing retail sales;

(m) sanitizing the salon;

(o) doing inventory and ordering supplies; and

(p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor must have in her possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Time earned while performing on the job training as an intern shall not apply towards credits required for graduation.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

August 21, 2007 58-11a-101

Notice of Continuation April 12, 2007 58-1-106(1)(a)

58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-5. Property Management.
R162-5-1. Definition.

5.1. For purposes of this rule, property management requiring a real estate license includes advertising real estate for lease or rent, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, collecting rent and accounting for and disbursing the money collected, arranging for repairs to be made to the real estate, and all other acts listed in Section 61-2-2(13)(a). It does not include the leasing or management of surface or subsurface minerals, or oil and gas interests, which is separate from a sale or lease of the surface estate.

R162-5-2. Exemptions.

5.2. The following individuals are not required to hold active real estate licenses to engage in property management:

5.2.1. Owners. An owner of real estate who manages his own property;

5.2.2. Employees. A regular salaried employee of an owner of real estate who manages property owned by his employer;

5.2.3. Apartment Managers. An individual who manages the apartments at which he resides in exchange for free or reduced rent on his apartment.

5.2.4. Homeowner's Association Employees. A full time salaried employee of a homeowner's association who manages units subject to the declaration of condominium which established the homeowner's association.

R162-5-3. Property Management by Real Estate Brokerage.

5.3. All property management performed by a real estate brokerage which has not obtained a separate property management company registration, or any licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage and not under a separate business name.

5.3.1. All property management activities by a sales agent or associate broker affiliated with a principal broker shall be actively supervised by that principal broker. In the case of a branch office, the branch broker shall also actively supervise the licensees and unlicensed assistants affiliated with that branch.

R162-5-4. Property Management by Separate Property Management Company.

5.4. A separate property management company registration must be obtained in order to conduct property management business under a name different than that of the real estate brokerage.

5.4.1. The business of a separate property management company shall be exclusively property management. No real estate sales activity may be conducted by a property management company.

5.4.2. A license to operate a property management company will be granted upon compliance with the following conditions:

5.4.2.1. Application. Submission of the property management company application form required by the division, signed by an actively licensed principal broker, together with the proper application fees.

5.4.2.2. Business Name Approval. Compliance with the name approval provisions in R162-2.3. in the case of a principal broker who registers the name of his property management company with the division or R162-2.4. in the case of a property management company registration issued to a corporation, partnership, Limited Liability Company or association.

5.4.2.3. Property management by unlicensed principals or owners prohibited. Individuals who are principals or owners of a corporation, partnership, Limited Liability Company or association which is issued a property management company registration shall not engage in activity which requires a license unless they are licensed with the division and properly affiliated with the management broker for the corporation, partnership, Limited Liability Company or association.

5.4.3. The principal broker shall sign and submit the forms required by the division to affiliate with the property management company of each associate broker, branch broker and sales agent who will conduct property management services for the property management company.

5.4.4. Support Services Personnel. Individuals who are employees of a property management company may perform the following services under the supervision of the principal broker without holding active real estate licenses: providing a prospective tenant with access to a vacant apartment; providing secretarial, bookkeeping, maintenance, or rent collection services; quoting predetermined rent and lease terms; and filling out pre-printed lease or rental agreements.

5.4.5. Supervision. All property management activities by an associate broker or sales agent affiliated with the management company and all activities on behalf of the company by support services personnel shall be actively supervised by the principal broker of the company. In the case of a branch office, the branch broker shall also actively supervise the licensees and support services personnel affiliated with that branch.

KEY: real estate business
April 23, 1998 61-2-5
Notice of Continuation April 18, 2007

R207. Community and Culture, Arts and Museums.
R207-1. Utah Arts Council General Program Rules.
R207-1-1. Utah Arts Council General Program Rules.

The Utah Arts Council shall set forth in printed and/or electronic materials: standards and procedures, eligibility requirements, fees, restrictions, panel and committee members, deadlines for submitting applications, requirements pertaining to specific opportunities, dates of events, liability, and other information which is available to the public. The Utah Arts Council has the authority to award prizes, commissions, grants and fellowships.

KEY: art in public places, art preservation, art financing, performing arts
September 12, 2003 9-6-205
Notice of Continuation August 3, 2007

R207. Community and Culture, Arts and Museums.
R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.
R207-2-1. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.

In order to maintain the quality and integrity of the Utah State Art Collections, the following policies have been adopted:

a. All works of art accepted into the Utah State Art Collections must be approved through the appropriate channels (Visual Arts Committee, Public Art Selection Committees, Folk Arts Selection Committee, etc.). This policy applies to commissions, purchases and donations of artwork. When art is added to any of the Utah State Art Collections, the Utah Arts Council will assume responsibility for cataloging, conserving, insuring, storing, and displaying that work. The criteria for selecting works for the Utah State Art Collections will be based on the quality of the work, and its role in filling historical, cultural, and stylistic gaps. Public Art commissions will be based on the aesthetic value, appropriateness to the site or facility, and budget.

b. If other state agencies are approached by an individual or organization wishing to donate a work of art, that agency may contact the Utah Arts Council to receive approval through the appropriate channels (see "a" above). If the agency does not contact the Utah Arts Council, or if the donation is not accepted by the Utah Arts Council, that agency becomes solely responsible for its ownership, including cataloging, conserving, insuring, storing, and displaying the donated work of art. The artwork will not be considered part of the Utah State Art Collections.

c. Loans of artwork from the Utah State Art Collections must be approved through appropriate channels in order for them to be insured by the state's Risk Management Division through the Utah Arts Council. Replacement value insurance for non-state agencies, by agreement or default, is borne by the institution receiving the loaned works. Works of art loaned directly to the Utah Arts Council for exhibition or other purposes are fully insured by the state's Risk Management Division through the Utah Arts Council. Public Art commissions are insured by the state's Risk Management Division through the Utah Arts Council and the host agency.

KEY: art loans, art donations, art in public places, art work
September 12, 2003 9-6-205
Notice of Continuation August 3, 2007

R277. Education, Administration.
R277-110. Legislative Supplemental Salary Adjustment.
R277-110-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "District or charter school" means a public school funded by the Utah State Legislature through the Minimum School Program.

C. "Educator" means a teacher or other individuals as defined by the Utah State Legislature in 53A-17a-153 (1) Educator Salary Adjustments.

D. "Educator Salary Adjustments" means salary increases paid annually in equal amounts to educators as defined in 53A-17a-153(1).

E. "USOE" means the Utah State Office of Education.

F. "USDB" means Utah Schools for the Deaf and the Blind.

R277-110-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which authorizes the Board to make rules regarding educator salary adjustments.

B. The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153, Educator Salary Adjustments, enacted by the 2007 Legislature.

R277-110-3. Procedures.

A. Each school district, charter school and USDB shall:

(1) put the Educator Salary Adjustment appropriation into the school district's, charter school's or USDB's salary schedule each year that an educator salary adjustment is appropriated by the Legislature;

(2) ensure the amount of the Educator Salary Adjustment is the same for each full-time-equivalent educator position in the school district, charter school, or the USDB;

(3) ensure that each person who is not a full-time educator receives a proportional salary adjustment based on the number of hours the person works in his current assignment as an educator;

(4) ensure that each educator who receives a salary adjustment for school year 2007-08 has received a satisfactory or above job performance rating in his most recent evaluation; new hires are considered to have met this requirement by successfully completing the position hiring process and being selected for an educator position.

B. The educator shall be:

(1) a classroom teacher;
(2) speech pathologist;
(3) librarian or media specialist;
(4) preschool teacher;
(5) school building level administrator;
(6) mentor teacher;
(7) teacher specialist;
(8) teacher leader;
(9) guidance counselor;
(10) audiologist;
(11) psychologist; or
(12) social worker as defined in 53A-17a-153 (1).

C. The educator shall be licensed, employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind and hold a current license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

D. Each school district, charter school, and the USDB shall annually note on the appropriate salary schedule:

(1) the amount of the Educator Salary Adjustment;
(2) the positions qualifying for the adjustment;
(3) that a satisfactory or better performance rating is required to receive the adjustment; and

E. For the 2007 school year, school districts, charter schools and the USDB shall note satisfactory performance ratings.

F. The USOE shall remit to school districts, charter schools and USDB, through monthly bank transfers and allotment memos beginning in July of each year, an estimated educator salary adjustment amount to be adjusted in November of each year to match the number of qualified educators in the CACTUS data base system.

G. Adjustments to CACTUS after November 1 of each year shall not count towards the amount for Educator Salary Adjustments until the following year.

H. Educator Salary Adjustments may not be included when calculating the weighted average compensation adjustment for non-administrative licensed staff.

R277-110-4. Reports.

A. School districts, charter schools and USDB shall maintain adequate accounting records to submit an annual report summarizing the uses and recipients of Educator Salary Adjustment funds to USOE each year by November 1 on USOE-designated forms.

(1) School districts, charter schools and USDB, shall

(a) Maintain the information by program and;

(b) Carry over any unused balances within the program for use in the following year.

(2) Reports shall balance with amounts reported on the AFR (Annual Financial Report) and the APR (Annual Program Report).

(3) Failure to submit the required reports on a timely basis may result in withholding of school district, charter school or USDB funds until the report is submitted in an acceptable format and is complete, or may render the school district, charter school or USDB, ineligible for participation in the Educator Salary Adjustment program the following year.

(4) Failure to remedy allocation of funds not in accordance with Section 53A-17a-153, Educator Salary Adjustment, and R277-110, Legislative Supplemental Salary Adjustment, shall also result in withholding of school district, charter school or USDB funds for the Educator Salary Adjustment program until an appropriate remedy is implemented and verified.

KEY: educators, salary adjustments
August 7, 2007 **Art X Sec 3**
53A-1-401(3)
53A-17a-153(6)

R277. Education, Administration.
R277-413. Accreditation of Secondary Schools.
R277-413-1. Definitions.

A. "Accreditation" means formal Northwest and Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.

B. "Annual Report" means a document that explains a school's compliance with educational standards and progress provided by the school in its school improvement plan. The school improvement plan is a dynamic document that reflects changes and progress made by the school community. The Annual Report also provides definitions and criteria required by Northwest for accreditation.

C. "Board" means the Utah State Board of Education.

D. "Northwest" means Northwest Association of Accredited Schools the regional accrediting association of which Utah is a member.

E. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 including public, private, parochial, alternative, and special purpose schools offering credits toward high school graduation or diplomas or both.

F. "State Committee" means the State Accreditation Committee, which is composed of public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel.

G. "USOE" means the Utah State Office of Education.

H. "Visiting team" means a team composed of three to eight active educators as determined by the size of the school, trained by the USOE in accreditation procedures and standards.

R277-413-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the standards and procedures by which secondary schools shall become accredited by the Board; and

(2) provide for additional requirements, which are unique to the state of Utah to be added to the Northwest Annual Report.

R277-413-3. Accreditation Classifications; Reports.

A. The Board accepts the Northwest standards as the basis for its accreditation standards for school accreditation.

B. The Board requires the satisfaction of additional specific Utah standards in addition to required Northwest standards, to satisfy Utah accreditation for Utah public schools.

C. A school shall complete the Annual Report provided by Northwest and submit the report to the USOE.

D. A school shall have a complete school evaluation and site visit at least once every six years to maintain its accreditation.

E. The USOE may require on-site visits as often as necessary when it receives notice of accreditation problems, as determined by Northwest, the USOE, or the State Committee.

F. The school's accreditation rating is recommended by the State Committee following a review of a school's Annual Report. Final approval of the rating is determined by the Board.

G. The classification ratings for accredited schools as designated by Northwest shall be:

(1) Approved: a school is classified as approved when it equals or exceeds the standards approved by Northwest and the Board.

(2) Approved with comment: a school is classified as Northwest/Board approved with comment when it has only minor deviations from specific standards.

(3) Advised: a school is classified as advised when there are deviations from one or more standard(s). Schools shall also be classified as advised when no observable effort has been made, by the second year, to correct deviations from a standard upon which comment was made in the previous year.

(4) Warned: a school is classified as warned when there are substantial deviations from one or more standard(s). A warned classification is usually given after a school has been advised and the deviation persists in the next Annual Report. A school may be dropped after two consecutive warned classifications, as recommended by the State Committee to the Board.

H. An accredited school may not be dropped to a non-accredited status without first receiving a warned classification. Exceptions to this procedure may be made due to discrepancies between information provided on the Annual Report and data received or by observations of the State Committee.

I. If a school disagrees with the recommendation of the State Committee, it may appeal as outlined in the USOE accreditation policies and procedures, maintained at the USOE.

J. All Northwest schools shall submit their Annual Report to the USOE by October 15 of each year.

K. Public junior high and middle schools that include 9th grade shall be visited and assigned status at least every six years by the USOE using Northwest accreditation standards. The schools are not required, however, to be members of Northwest or file annual reports.

R277-413-4. Accreditation Procedures.

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the USOE, and Northwest share responsibilities. A school's self-evaluation, development, and implementation of a school improvement plan are the crucial primary steps toward accreditation.

B. A school seeking Northwest accreditation for the first time shall submit a membership application to Northwest. The accepted application shall be forwarded to the USOE.

(1) Upon a visit by USOE staff verifying a school's compliance with accreditation standards, the school shall then receive provisional accreditation.

(2) Within three years of receiving provisional, accreditation, a candidate school shall complete a self-evaluation utilizing materials and protocols recommended and/or provided by the USOE.

(3) Provisional schools shall be visited annually until they have completed their first self-evaluation and full-team visit.

C. Northwest accredited schools shall be subject to:

(1) compliance with Northwest membership requirements;

(2) receipt and review of annual reports by the State Committee;

(3) satisfactory review by the State Committee, Northwest, and final Board approval;

(4) a new self-evaluation and site visit at least every six years by a visiting team assigned by the USOE to review the self-evaluation materials, visit classes, and talk with staff and students as follows:

(a) The visiting team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, USOE staff, and the Board.

(b) USOE staff shall review the visiting team report, consult with the State Committee and Northwest and recommend appropriate accreditation status to the Board.

D. Following review and acceptance, accreditation visiting team reports are public information and are available online.

E. The Board is the final accrediting authority.

R277-413-5. Board Accreditation Standards.

A. Board accreditation standards include Northwest standards and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

B. Northwest Core Standards for Accreditation.

(1) Teaching and Learning Standards

(a) Mission, Beliefs and Desired Results for Student Learning.

(b) Curriculum

(c) Instruction

(d) Assessment

(2) Support Standards

(a) Leadership and Organization

(b) School Services

(i) Student Support Service

(ii) Guidance Services

(iii) Health Services

(iv) Library Information Services

(v) Special Education Services

(vi) Family and Community Services

(c) Facilities and Finance

(3) School Improvement Standard

(a) Culture of Continual Improvement

C. Utah-specific indicators have been added to the Northwest standard indicators which include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific indicators are available from the USOE Curriculum Section.

KEY: accreditation

August 7, 2007	**Art X Sec 3**
Notice of Continuation February 26, 2004	**53A-1-402(1)**
	53A-1-401(3)

R277. Education, Administration.
R277-459. Classroom Supplies Appropriation.
R277-459-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Classroom teacher" definition criteria:

(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, or charter schools.

(2) Eligible teachers are licensed personnel, and paid on a school district's salary schedule or a charter school's salary schedule.

(3) Teachers shall be employed for an entire contract period.

(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.

C. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator. All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

E. "First year classroom teacher/intern" means any teacher who has no experience posted in the teacher's CACTUS file in the school/school district in which the teacher is currently assigned as of the November 1 2007 CACTUS update.

F. "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional.

G. "Second year through fifth year classroom teacher" means any teacher who has one to four years of experience in the teacher's CACTUS file as of the November 1, 2007 CACTUS file.

H. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

I. "USOE" means the Utah State Office of Education.

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, or charter schools to classroom teachers for school materials and supplies and field trips.

R277-459-3. Distribution of Funds.

A. The USOE shall generate from the CACTUS database a teacher count of the full-time classroom teachers and intern teachers as defined in this rule for each school district, the Utah Schools for the Deaf and the Blind, or charter schools as of November 1 of each year.

B. The USOE shall distribute a base allocation through each school district, the Utah Schools for the Deaf and the Blind, and to charter schools proportionally per eligible position to the extent of the appropriation.

(1) In addition to the total base allocation to all teachers as directed in H.B. 160, 2007 Legislative Session, an additional amount shall be distributed to teachers in any grade in the first year of teaching, or as an intern, in each school district, the Utah Schools for the Deaf and the Blind, or charter schools proportionally per eligible position, to the extent of the appropriation.

(2) If the teacher allocation in R277-459-3B(1) exceeds $500 per first year classroom teacher/intern as defined under R277-459-1E, the rest of the funding shall be distributed to teachers in any grade in the second through the fifth year of teaching using the following schedule:

(a) second year teacher shall receive 80 percent of first year teacher amount;

(b) third year teacher shall receive 60 percent of first year teacher amount;

(c) fourth year teacher shall receive 40 percent of first year teacher amount;

(d) fifth year teacher shall receive 20 percent of first year teacher amount.

C. Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. School districts/charter schools and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

D. Each school district/charter school shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following years.

F. These funds shall supplement, not supplant, existing funds for identified purposes.

G. These funds shall be accounted for by the school district/charter school or eligible school using state and school district procurement and accounting policies.

H. The funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, or charter schools. Employees do not personally own materials purchased with designated public funds.

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind, or charter schools shall allow, but not require, teachers to jointly use their allocations.

B. School districts, the Utah Schools for the Deaf and the Blind, and charter schools may carry over these funds, if necessary.

KEY: teachers, supplies

August 7, 2007 **Art X Sec 3**
Notice of Continuation July 6, 2005 **53A-1-402(1)(b)**

R277. Education, Administration.
R277-462. Comprehensive Counseling and Guidance Program.
R277-462-1. Definitions.

A. "ATE Consortium" means representatives of nine ATE Regional Planning Areas.

B. "Board" means the Utah State Board of Education and Applied Technology Education.

C. "Comprehensive Counseling and Guidance Program" means the organization of resources to meet the priority needs of students through four delivery system components:

(1) guidance curriculum which means providing guidance content to all students in a systematic way;

(2) student educational and occupational planning component which means individualized education and career planning with all students;

(3) responsive services component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

D. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives of district counseling supervisors, district ATE directors, PTA, the school counselor professional association, and practicing school counselors.

E. "Direct services" means time spent on the guidance curriculum, individual student planning, including SEOP, and responsive services activities meeting students' identified needs as discerned by students, school personnel and parents consistent with district policy.

F. "SEOP" means student education occupation plans and processes.

G. "Student achievement" means academic performance, career development, personal/social development, retention, attendance, SEOP outcomes and other measures of adequate yearly progress.

H. "USOE" means the Utah State Office of Education.

I. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1a-106(2)(b) which directs local boards to develop policies for the implementation of student education plans (SEP) or SEOPs, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, schools shall implement SEOP policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board policy, and the school improvement plan developed for Northwest Accreditation.

(2) Each school, including charter schools, which has a USOE-approved Comprehensive Counseling and Guidance Program shall receive a base of 6 WPU for the first 400 students as determined by the October 1 enrollment of the previous fiscal year, and a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students.

(3) Priority for funding shall be given for grades nine through twelve for ATE programs including the Comprehensive Counseling and Guidance Program and any remaining funds shall be allocated to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. Funds directed to grades seven and eight shall be distributed according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The charter school or school district Comprehensive Counseling and Guidance Program shall be integrated into the mission of the school and be consistent with the Northwest Accreditation process as defined in R277-413, Accreditation of Secondary Schools, Alternative or Special Purpose Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan developed as part of the Northwest Accreditation process.

(5) Schools shall qualify to receive Comprehensive Counseling and Guidance Program funds through participation in a regular schedule of on-site review by team members designated by the district or charter school. Scheduling of the on-site review process shall be coordinated with the Northwest Accreditation process for secondary schools as defined in R277-413 and shall, at a minimum, take place every three years. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities in individual student planning, guidance curriculum, responsive services and system support.

(6) Consistent with Section 53A-17a-113(5) of the monies allocated to Comprehensive Counseling and Guidance Programs, $1,000,000 in grants shall be awarded to school districts and charter schools that:

(a) provide an equal amount of matching funds; and

(b) do not supplant other funds used for Comprehensive Counseling and Guidance Programs; and

(c) show effort to make the counselor to student ratio for Comprehensive Counseling and Guidance Programs no greater than one counselor for every 350 students.

(7) Districts and charter schools shall include in their annual Request for Proposal to the USOE for Comprehensive Counseling and Guidance Program funds a description of sources for the matching funds and a confirmation that such monies shall be used to reduce counselor to student ratios or maximize direct services to students by school counselors.

(8) Comprehensive Counseling and Guidance Program funds shall be distributed to districts for schools within the district or charter schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty percent of aggregate counselors time is devoted to DIRECT service to students through a balanced program of individual planning, guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory and steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) Responsive services are available to address the immediate concerns and identified needs of all students through an education-oriented and programmatic approach, and in collaboration with existing school programs and coordination with family, school and community resources;

(i) Delivery to students of a developmental and sequential guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. Guidance curriculum is prioritized according to the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Establishment of Student Education Occupation Planning (SEOP), both as a process and a product consistent with local board or charter school governing board policy and goals of the Utah Model for Comprehensive Counseling and Guidance Program, Northwest Accreditation, R277-413, and Applied Technology Education, R277-911; and

(l) All Program elements are designed to recognize and address the diverse needs of every student.

B. All districts may qualify schools for the Comprehensive Counseling and Guidance Program funds and districts and charter school governing boards shall certify in writing that all Program standards are being met by each school receiving funds under this rule and meet the following deadlines: The "Form for Program Approval" shall be received by the USOE from schools scheduled for review in the three year cycle no later than May 1 of each year for disbursement of funds the next year.

R277-462-4. Use of Funds.

A. Funds disbursed for this Program shall be used by the district in the district secondary schools in grades seven through twelve to provide a guidance curriculum and an SEOP for each student at the school, to provide responsive services, and to provide system support for the Comprehensive Counseling and Guidance Program. Such costs may include the following:

(1) personnel costs;

(2) career center equipment such as computers, or media equipment;

(3) career center materials such as computer software, occupational information, SEOP folders, and educational information;

(4) in-service training of personnel involved in the Comprehensive Counseling and Guidance Program;

(5) extended day or year if REQUIRED to run the Program; and

(6) guidance curriculum materials for use in classrooms.

B. Funds shall not be used for non-guidance purposes or to supplant funds already being provided for the Comprehensive Counseling and Guidance Program except that:

(1) Districts or charter schools may pay for the costs incurred in hiring NEW personnel as a means of reducing the pupil/counselor ratio and eliminating time spent on non-guidance activities in order to meet the Program criteria.

(2) Districts or charter schools may pay other costs associated with a Comprehensive Counseling and Guidance Program which were incurred as a part of the Program during the implementation phase but which WERE NOT a regular part of the Program prior to that time.

R277-462-5. Variances and Reporting.

A. New schools that are created from schools that have Northwest accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. Charter schools and other new schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and program implementation.

C. The USOE shall monitor the Program and provide an annual report on its progress and success.

D. Districts or charter schools shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program as requested.

KEY: public education, counselors
August 7, 2007 **Art X Sec 3**
Notice of Continuation September 7, 2004 **53A-15-201**
53A-17a-131.8

R277. Education, Administration.
R277-467. Distribution of Funds Appropriated for Library Books and Electronic Resources.
R277-467-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Electronic resources" means databases, CDs, DVDs, software or other items in electronic format which may be included in the school library media collection and made available for use or access in the school library media center.

C. "Library books" means trade books that support the school curriculum and books for recreational reading interests. This definition does not include textbooks or books used solely for classroom instruction or classroom libraries.

D. "USOE" means the Utah State Office of Education.

R277-467-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, 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 distribute an on-going appropriation, subject to budget constraints, to school districts and charter schools. The appropriation is designated for school library books and electronic resources.

R277-467-3. Distribution of Funds.

A. Each Utah public and charter school shall receive an allocation from the annual appropriation as follows:

(1) 25 percent shall be divided equally among all public schools; and

(2) 75 percent shall be divided among public schools based on each school's average daily membership as compared to the total average daily membership of all public schools.

B. A school district or charter school may not use money appropriated in this allocation to supplant other monies used to purchase library books or electronic resources.

C. Schools shall spend these fund allocations only for library books and electronic resources that shall be part of the school library media collection and available for general use and checkout by students and staff or both.

R277-467-4. Accountability and Evaluation.

The USOE may review schools' use of funds to determine if funds were expended consistently with the purpose of this rule and the appropriation.

KEY: libraries, educational media
August 7, 2007 **Art X Sec 3**
53A-1-401(3)

R277. Education, Administration.
R277-469. Instructional Materials Commission Operating Procedures.
R277-469-1. Definitions.

A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

B. "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.

C. "Board" means the Utah State Board of Education.

D. "Commission" means the Instructional Materials Commission.

E. "Instructional materials" means systematically arranged text materials, in harmony with the Core framework and required courses of study or U-PASS requirements or both, which may be used by students or teachers or both as principal sources of study and which cover any portion of the course. These materials:

(1) shall be designed for student use; and

(2) may be accompanied by or contain teaching guides and study helps; and

(3) shall be high quality, research-based and proven to be effective in supporting student learning.

F. "Independent party" means an entity that is not the Board, not the superintendent of public instruction or USOE staff, or an employee or board member of a school district, or the instructional materials creator or publisher, or anyone with a financial interest in the instructional materials, however minimal. The USOE shall develop a list of approved independent parties to be recommended to the Board.

G. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

H. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

I. National Instructional Materials Accessibility Standard (NIMAS) is a technical standard used by publishers to produce consistent and valid XML-based source files that may be used to develop multiple specialized formats, such as Braille or audio books, for students with print disabilities.

J. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

K. "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in R277-700-4, 5, and 6.

L. "Primary instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

M. "Public website" means a website provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment mapping to the Core for Utah primary instructional materials.

N. "Recommended instructional materials (RIMs)" means the recommended instructional materials searchable database provided as a free service by the USOE for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers and on the public website of the publisher, if applicable, for review by the Commission and approval of the Board.

O. "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools. The Core is provided in R277-700.

P. "USOE" means the Utah State Office of Education.

Q. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses, to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, as defined in Section 53A-1-602;

(3) a direct writing assessment in grades 6 and 9; and

(4) a tenth grade basic skills competency test as detailed in Section 53A-1-611.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools. The rule also provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law.

R277-469-3. Use of State Funds for Instructional Materials.

A. School districts may use funds:

(1) for primary instructional materials that have been mapped and aligned to the Core by an independent party; and

(2) for any supplemental or supportive instructional materials that support Core or U-PASS requirements.

(3) for instructional materials selected and approved by a school or school district consistent with the standards of this rule and:

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); or

(c) consistent with Section 53A-14-102(4).

B. Schools or school districts that use any funding source to purchase materials that have not been recommended or selected consistent with law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

C. Free instructional materials:

(1) that are used as primary instructional materials or that are part of primary integrated instructional programs shall be subject to the same independent party evaluation and Core mapping as basal or Core material; or

(2) if free materials are provided as part of a supplemental program, they may be used as student instructional materials only consistent with the law and this rule; and

(3) shall be reviewed and recommended by the Commission or by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

R277-469-4. Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Section 53A-14-101.

B. Members shall serve four year staggered terms with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. The primary focus of instructional materials review shall be materials used in subjects assessed under U-PASS to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

B. Subject areas and timelines for review shall be determined by the Commission based on school district needs and requests, and using forms and procedures provided by the USOE.

C. Commission review of material takes place at least annually.

R277-469-6. Review and Adoption Categories.

Materials may be considered for review by the Commission and designated under the following categories. They may be purchased with state funds and used consistent with this rule:

A. Recommended Primary: Instructional materials that:

(1) are in alignment with content, philosophy and instructional strategies of the Core;

(2) have been mapped and aligned to the Core, consistent with Section 53A-14-107;

(3) are appropriate for use by students as principal sources of study;

(4) provide comprehensive coverage of course content; and

(5) support Core or U-PASS requirements or both.

B. Recommended Limited: Instructional materials that are in limited alignment with the Core or U-PASS requirements or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.

C. Recommended Teacher Resource: Instructional materials that are appropriate as resource materials for use by teachers.

D. Recommended Student Resource: Instructional materials aligned to the Core or that support U-PASS that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.

E. Reviewed, but not Recommended: Instructional materials that may not be aligned with the Core, may be inaccurate in content, include misleading connotations, contain undesirable presentation, or are in conflict with existing law and rules. School districts are strongly cautioned against using these materials.

F. Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.

R277-469-7. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

A. Instructional materials shall:

(1) be consistent with Core or U-PASS requirements or both;

(2) if used as primary materials, be mapped and aligned to the Core consistent with Section 53A-14-107;

(3) be high quality, research-based and proven to be effective in supporting student learning;

(4) provide an objective and balanced viewpoint on issues;

(5) include enrichment and extension possibilities;

(6) be appropriate to varying levels of learning;

(7) be accurate and factual;

(8) be arranged chronologically or systematically, or both;

(9) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;

(10) be free from sexual, ethnic, age, gender or disability bias and stereotyping; and

(11) be of acceptable technical quality.

B. Publishers, when submitting new primary material to be evaluated by the USOE, shall submit an electronic version in NIMAS file format of that material to the National Instructional Materials Access Center (NIMAC) for use in conversion into Braille, large print, and other formats for students with print disabilities.

C. USOE review:

(1) The USOE may require a school district to provide a report of instructional materials purchased by the school district or a school in the previous five years.

(2) The USOE may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-8. Agreements and Procedures for School Districts.

A local board shall establish a policy for school district and school selection and purchase of instructional materials. The policy shall include:

A. assurances signed by the school district superintendent and school principal(s) that primary instructional materials have been aligned to the Core by an independent party and that the completed Core alignment mapping is available on a public website free of charge for teachers and the general public.

B. assurances signed by the school district superintendent and school principal(s) that instructional materials not recommended by the Commission have been selected consistent with state law. The assurances shall be available for review by the Board upon request.

C. Consistent with legislative direction, charter schools are exempt from using only instructional materials that have been reviewed consistent with this rule under Section 53A-1a-511(4)(g).

R277-469-9. Agreements and Procedures for Publishing Companies.

A. Publishing companies desiring to sell primary instructional materials to Utah school districts and schools shall:

(1) contract with an independent party to evaluate and align the primary instructional material and related ancillary materials to the appropriate Utah Core for basic skills courses and in harmony with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment mapping on a public website at no charge; and

(b) the publisher provides a hyperlink from the public website to the Commission for the purpose of tying the independent alignment mapping to the evaluation conducted by the Commission on the RIMs website.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. Publishers seeking to sell recommended materials to Utah schools or school districts shall have adopted materials on deposit at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

C. Depository agreements may be made between publishers of materials and one or more depository.

D. The provisions of R277-469-9 shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

E. Recommended materials with revisions:

(1) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes; and

(d) the publisher submits a revised electronic edition in NIMAS file format to the National Instructional Materials Access Center (NIMAC) if the USOE approves the substitution request.

(2) If Subsection R277-469-8E is not satisfied, a new edition shall be submitted for recommendation as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the state subject area specialist.

F. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

R277-469-10. Request for Reconsideration of Recommendation.

A. A request for reconsideration is an additional opportunity provided to a school district, school or publisher for review of instructional materials when the school district, school or the publisher disagrees with the initial Commission recommendation.

B. The request for reconsideration procedure is as follows:

(1) A school district, school or publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(2) A school district, school or publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next review cycle.

(3) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the USOE.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the advisory committee's recommendation shall be voted on by the Commission at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Board shall consider the Commission's revised recommendation at the next scheduled Board meeting and make a final decision.

(8) A school district, school or publisher shall receive written notification that a recommendation is final and shall receive a copy of the new evaluation. Evaluations may now appear on the Internet if materials are recommended.

KEY: instructional materials
August 7, 2007 Art X, Sec 3
Notice of Continuation April 1, 2003 53A-1-401 through 53A-14-106 53A-1-401(3)

R277. Education, Administration.
R277-470. Charter Schools.
R277-470-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

C. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.

D. "Charter school deficiencies" means the following information:

(1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;

(2) a charter school is not providing required documentation following reasonable warning;

(3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.

E. "Charter school founding member" or "founding member" means an individual who had a significant role in the initial development of the charter school up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.

F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school similar to a local board of education.

G. "Days" means calendar days, unless specifically designated.

H. "Expansion" means a proposed increase of students or grade level(s) in an operating charter school at a single location.

I. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing public education.

J. "Neighborhood school" for purposes of this rule, means a public, non-charter school.

K. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

L. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.

M. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area.

N. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

O. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-1a-104(5)(b).

P. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-104(6).

Q. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

R. "USOE" means the Utah State Office of Education.

S. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to adopt rules for charter school funding and fund distribution, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools and to ensure parent involvement on charter school boards.

R277-470-3. Maximum Authorized Charter School Students.

A. Total authorized students for both the 2007-08 and 2008-09 school years include all students who attend charter schools in the respective school years.

B. Local school boards may not approve locally-chartered schools for the 2007-08 or 2008-09 school years unless they notify the Board by April 15, 2007 of proposed locally-chartered schools and estimated numbers of students.

C. The Board, in consultation with the State Charter School Board, may approve schools, expansions and satellite charter schools for the total number of students authorized under 53A-1a-502.5 minus the total projected number of students who will attend locally-chartered schools provided the State Charter School Board receives notification of proposed locally-chartered schools by April 15, 2007.

D. Locally-chartered schools submitting applications shall be considered with all new charters.

E. If the State Charter School Board does not receive written notification of proposed locally-chartered schools by April 15, 2007 and March 15 every year thereafter, the State Charter School Board may recommend approval of additional Board-chartered schools or expansions or satellites that include the entire total number of students allowed under 53A-1a-502.5.

R277-470-4. Charter School Orientation and Training.

A. Beginning with the 2006-2007 school year, all charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.

B. Orientation meetings shall be scheduled at least quarterly and be held regionally or be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.

D. Orientation/training sessions shall provide information including:

(1) charter school implementation requirements;

(2) charter school statutory and Board requirements;

(3) charter school financial and data management requirements;

(4) charter school legal requirements;

(5) federal requirements for charter school funding; and

(6) other items as determined by the State Charter School Board.

R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All charter schools opening or expanding after July 1, 2007 shall notify all families consistent with the schools' outreach plans described in the charter agreements of:

(1) a new or expanding charter school's purpose, focus and governance structure, including names and contact information of governing board members;

(2) the number of new students that will be admitted into the school;

(3) the proposed school calendar for the charter school;

(4) the charter school's timelines for acceptance or rejection of new students;

(5) a State-approved student charter school application (beginning with the 2008-09 school year);

(6) procedures for transferring to or from a charter school, together with applicable timelines; and

(7) provide for payment, if required, of a one-time fee per secondary school enrollment, not to exceed $5.00, consistent with Section 53A-12-103.

B. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 150 days before the proposed opening day of school beginning with the 2008-09 school year; or

C. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place, and for schools opening after the 2007-08 school year at least 150 days before the proposed first day of school. The completed charter school website shall be provided to the State Charter School Board at least 170 days prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.

R277-470-6. Transfer Student Criteria.

A. Charter schools shall allow students to transfer from one charter school to another and enroll students only consistent with Sections 53A-1a-506.5(2) through (5), including timelines.

B. Charter schools shall provide notice to a withdrawing student's school of residence consistent with Section 53A-1a-506.5(4) and using USOE-designated transfer forms.

C. Both charter schools and neighborhood schools shall enroll students and exchange student information consistent with 53A-1a-506.5(2)(c) and 53A-11-504 and using USOE-designated transfer forms.

D. Both charter schools and neighborhood schools shall have policies that provide procedures for properly excluding students and notifying students and parents under 53A-11-903 and 53A-11-904.

E. Neither neighborhood schools nor charter schools may discourage students from attending schools of choice in violation of state or federal law.

F. Neither charter schools nor neighborhood schools shall be required to enroll students who have been properly excluded from public schools under 53A-11-903 and 53A-11-904.

R277-470-7. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. A local or state-chartered school shall be approved by November 30, two years prior to the school year it intends to serve students in order to be eligible for state funds.

C. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

D. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.

E. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-470-8. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board in absence of the State Charter School Board action may:

(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds; or

(3) recommend cessation of federal funding to the school;

(4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or

(5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-470-9. Charter School Financial Practices and Training.

A. Charter school business and financial staff shall attend USOE required business meetings for charter schools.

B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-1-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

G. Charter schools shall comply with R277-471, Oversight

of School Inspections.

R277-470-10. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.

A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.

B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school, consistent with R277-470-4.

C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.

D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:

(1) current board members and founding members;

(2) audit and financial records:

(a) record of state payments received;

(b) record of contributions received by the school from inception to date;

(c) test scores, including calendar of testing;

(d) current employees: identifying assignments and licensing status, if applicable;

(e) student lists, including home addresses or uniform student identifiers for current students;

(f) school calendar for previous school year and prospective school year;

(g) course offerings, if applicable;

(h) affidavits, signed by all board members providing or certifying (documentation may be required):

(i) the school's nondiscrimination toward students and employees;

(ii) the school's compliance with all state and federal laws;

(iii) that all information on application provided is complete and accurate;

(iv) that school meets/complies with all health and safety codes/laws;

(v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;

(vi) that the school is operating consistent with the school's charter;

(vii) the school's Annual Yearly Progress status under No Child Left Behind;

(viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;

(ix) that the previous local board of education supports or does not support conversion;

E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.

F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.

G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.

H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

I. Final approval or denial of conversion is final administrative action by the Board.

R277-470-11. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-11.

B. To obtain its allocation of NCLB formula funds, a charter school shall identify its economically disadvantaged students in the October upload of the Data Clearinghouse.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-12. Charter School Parental Involvement.

A. Charter schools shall encourage and maintain active involvement of parents of current charter school students.

B. Beginning with the 2007-2008 school year, all charter schools shall have at least one elected parent representative chosen by and from parents of students currently attending the charter school to serve on a rotating basis as a voting member on the charter school's governing board with additional parents of students currently attending the charter school totaling a minimum of twenty-five percent of the governing board.

C. A charter school's charter shall provide the election process and selection process for selecting the required parent representative(s) for the governing board and the rotating terms for elected and identified parents.

D. Charter schools that apply for School LAND Trust funds shall have a majority of parents elected from parents of students currently attending the charter school on the committee designated to make decisions about School LAND Trust funds consistent with R277-477-3E.

R277-470-13. Charter School Oversight and Monitoring.

A. The State Charter School Board shall provide direct oversight to the state's charter schools, including:

(1) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;

(2) quarterly review of summary financial records and disbursements;

(3) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations;

(4) regular review of charter school operations to ensure the operations and practices are consistent with the currently approved charter language;

(5) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff; and

(6) audits and investigations of claims of fraud or misuse of public assets or funds.

B. The Board retains the right to review or repeal charter school authorization based upon factors that may include:

(1) financial deficiencies or irregularities; or

(2) persistently low student achievement inconsistent with comparable schools; or

(3) failure of the charter school to comply with state law, Board rules, or directives; or

(4) failure to comply with currently approved charter commitments.

C. All charter schools shall amend their charters to include

the following statement:

To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all other provisions of the charter school shall remain in full force and effect.

R277-470-14. Approved Charter School Expansion.

A. The following shall apply to requests for expansion for approved and operating charter schools:

(1) The school satisfies all requirements of state law and Board rule.

(2) The approved Charter Agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1s-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;

(c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(d) students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(e) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. The charter school governing board shall file a request with the State Charter School Board for an expansion no fewer than nine months prior to the date of the proposed implementation of the expansion.

C. Expansion requests for the 2008-09 school year shall be considered by the State Charter School Board as part of the total number of new charter school students allowed under 53A-1a-502.5(1).

R277-470-15. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school if the charter school fully satisfies the following:

(1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(2) The school has operated successfully for at least three years;

(3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;

(6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;

(7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and

(8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.

(9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

(1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;

(2) A detailed explanation of the governance structure for the satellite school, including appointed, elected and parent representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan. The applicant charter school shall include at least two voting parent members representing the parents of students at the satellite school on its governing board; at least one parent shall be elected by parents of students attending the satellite school;

(3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;

(4) A detailed financial plan for the satellite school;

(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;

(a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy;

(b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.

(6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);

(7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

D. A charter school may not apply for more than three satellite locations.

R277-470-16. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) School districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

(4) Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-17. Charter School Building Subaccount.

A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-1a-104(6) by July 15 annually.

(1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals who meet the qualifications of 53A-1a-104(6)(a) from interested parties, including individuals desiring to nominate themselves, before June 1. The Board shall determine an appropriate number of Subaccount Committee members based upon nominations.

(2) The governor shall nominate one or more individuals who meet the qualifications of 53A-1a-104(6)(a) before June 1.

(3) Subaccount Committee members shall serve three year terms, beginning in June 2007. If revolving loan account funds continue to be available, the Board shall appoint at least two additional members in June 2008, to ensure continuity of the committee.

B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-1a-104(6)(b) and (8).

C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board. The Subaccount Committee shall also establish terms and conditions for loan repayment.

D. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-104(5)(c) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

(f) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

F. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

G. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

H. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

I. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

J. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

R277-470-18. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:

(1) recommendation for termination of a charter;

(2) recommendation for denial of expansions or satellite schools;

(3) recommendation for denial of local charter board proposed changes to approved charters;

(4) recommendation for denial or withholding of funds from local charter boards; and

(5) recommendation for denial of a charter.

C. No other issues may be appealed.

D. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:

(a) provide written notice of denial to the charter school or approved charter school;

(b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and

(c) post information about the appeals process on the State Charter School Board website and provide training to prospective charter school board members and staff regarding the appeals procedure.

(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.

(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and
(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

R277-470-19. Miscellaneous Provisions.

A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.

(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

B. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety, or welfare of students consistent with 53A-1a-510(3).

(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with 62A-4a-403 and 53A-11-605(4).

(2) Additionally, Individuals may report threats to the health, safety, or welfare of students to the local charter board.
(a) reports shall be made in writing;
(b) reports shall be timely;
(c) anonymous reports shall not be reviewed further.

(3) Local charter boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Local charter boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

KEY: education, charter schools

August 7, 2007	**Art X, Sec 3**
Notice of Continuation October 31, 2003	**53A-1a-513**
	53A-1a-515
	53A-1a-502
	53A-1a-505
	53A-1-401(3)
	53A-1a-510
	53A-1a-509
	41-6-115

R277. Education, Administration.
R277-473. Testing Procedures.
R277-473-1. Definitions.

A. "Basic skills course" means those courses specified in Utah law for which CRT testing is required.

B. "Board" means the Utah State Board of Education.

C. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

D. "CS" means the USOE Computer Services section.

E. "Days" for purposes of this rule means calendar days unless specifically designated otherwise in this rule.

F. "Direct Writing Assessment (DWA)" means a USOE-designated test to measure writing performance for students in grades six and nine.

G. "Last day of school" means the last day classes are held in each school district/charter school.

H. "Norm-reference Test (NRT)" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

I. "Protected test materials" means consumable and nonconsumable test booklets, directions for administering the assessments and supplementary assessment materials (e.g., videotapes) designated as protected test materials by the USOE. Protected test materials shall be used for testing only and shall be secured where they can be accessed by authorized personnel only.

J. "Raw test results" means number correct out of number possible, without scores being equated and scaled.

K. "Standardized tests" means tests required, consistent with Sections 53A-1-601 through 53A-1-611, to be administered to all students in identified subjects at the specified grade levels.

L. "Utah Academic Proficiency Assessment (UALPA)" means a USOE-designated test to determine the academic progress of English Language Learner students.

M. "Utah Alternative Assessment (UAA)" means a USOE-designated test to measure students with disabilities with severe cognitive disabilities.

N. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests.

O. "USOE" means the Utah State Office of Education.

R277-473-2. 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-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs 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 specific standards and procedures by which school districts/charter schools shall handle and administer standardized tests.

R277-473-3. Time Periods for Administering and Returning Materials.

A. School districts/charter schools shall administer assessments required under Section 53A-1-603 according to the following schedule:

(1) All CRTs (elementary and secondary, English language arts, math, science) shall be given in a five week window beginning five weeks before the last Monday of the end of the course.

(2) The Utah Basic Skills Competency Test shall be given Tuesday, Wednesday, and Thursday of the first week of February and Tuesday, Wednesday, and Thursday of the third week of October.

(3) Sixth and ninth grade Direct Writing Assessment shall be given in a three week window beginning at least 14 weeks prior to the last day of school.

B. School districts shall require that all schools within the school district or charter schools administer NRTs within the time period specified by the publisher of the test.

C. School districts/charter schools shall submit all answer sheets for the CRT and NRT tests to the CS Section of the USOE for scanning and scoring as follows:

(1) School districts/charter schools shall return CRT, UAA and DWA answer sheets to the USOE no later than five working days after the last day of the testing window.

(2) School districts/charter schools shall return NRT answer sheets to the USOE no later than five working days after the last day of the testing time period specified by the publisher of the test.

(3) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day.

(4) School districts/charter schools shall return UALPA answer sheets to the USOE no later than May 15 for traditional schedule schools and June 15 for year-round schedule schools beginning with the 2007-08 school year.

D. When determining the date of testing, schools on trimester schedules shall schedule the testing at the point in the course where students have had approximately the same amount of instructional time as students on a regular schedule and provide the schedule to the USOE. Basic skills courses ending in the first trimester of the year shall be assessed with the previous year's form of the CRTs.

E. Makeup opportunities shall be provided to students for the Utah Basic Skills Competency Test according to the following:

(1) Students shall be allowed to participate in makeup tests if they were not present for the entire Utah Basic Skills Competency Test or subtest(s) of the Utah Basic Skills Competency Test.

(2) School districts/charter schools shall determine acceptable reasons for student makeup eligibility which may include absence due to serious illness, absence due to family emergency, or absence due to death of family member or close friend.

(3) School districts/charter schools shall provide a makeup window not to exceed five days immediately following the last day of each administration of the Utah Basic Skills Competency Test.

(4) School districts/charter schools shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the Utah Basic Skills Competency Test.

R277-473-4. Security of Testing Materials.

A. All test questions and answers for all standardized tests required under Sections 53A-1-601 through 53A-1-611, shall be designated protected, consistent with Section 63-2-304(5), until released by the USOE. A student's individual answer sheet shall be available to parents under the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99).

B. The USOE shall maintain a record of all of the protected test materials sent to the school districts/charter schools.

C. Each school district/charter school shall maintain a record of the number of booklets of all protected test materials sent to each school in the district and charter school, and shall submit the record to USOE upon request.

D. Each school district/charter school shall ensure that all test materials are secured in an area where only authorized personnel have access, or are returned to USOE following testing as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form beyond the time period allowed for test administration.

E. Individual schools within a school district and charter schools shall secure or return paper test materials within three working days of the completion of testing. Electronic testing materials shall be secured between administrations of the test, and shall be removed from teacher and student access immediately following the final administration of the test.

F. The USOE shall ensure that all test materials sent to a school district/charter school are returned as required by USOE, and may periodically audit school districts/charter schools to confirm that test materials are properly accounted for and secured.

G. School district/charter school employees and school personnel may not copy or in any way reproduce protected test materials without the express permission of the specific test publisher, including the USOE.

R277-473-5. Format for Electronic Submission of Data.

A. CS shall communicate regularly with school districts/charter schools regarding required formats for electronic submission of any required data.

B. School districts/charter schools shall ensure that any computer software for maintaining school district/charter school data is, or can be made, compatible with CS requirements and shall report data as required by the USOE.

R277-473-6. Format for Submission of Answer Sheets and Other Materials.

A. The USOE shall provide a checklist to each school district/charter school with directions detailing the format in which answer documents are to be collected, reviewed, and returned to the USOE.

B. Each school district/charter school shall verify that all the requirements of the testing checklist have been met.

C. CRT data may be submitted in batches in cooperation with the assigned CS data technician.

R277-473-7. Timing for Return of Results to School Districts/Charter Schools.

A. Scanning and scoring shall occur in the order data is received from the school districts/charter schools.

B. Consistent with Utah law, raw test results from all CRTs shall be returned to the school before the end of the school year.

C. Each school district/charter school shall check all test results for each school within the district and charter school and for the school district as a whole, verify their accuracy with CS, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to school or school district data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence (e.g., school fire) that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

D. School districts/charter schools shall not release data until authorized to do so by the USOE.

R277-473-8. USOE and School Responsibilities for Crisis Indicators in State Assessments.

A. Students participating in state assessments may reveal intentions to harm themselves or others, that the student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. The USOE shall notify the school principal, counselor or other school or school district personnel who the USOE determines have legitimate educational interests, whenever the USOE determines, in its sole discretion, that a student answer indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant written text.

E. Using their best professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The text provided by USOE shall not be part of the student's record and the school shall destroy any copies of the text once the school or district personnel involved in resolution of the matter determine the text is no longer necessary. The school principal shall provide notice to the USOE of the date the text is destroyed.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

R277-473-9. Standardized Testing Rules and Professional Development Requirement.

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts/charter schools shall develop policies and procedures consistent with the law and Board rules for standardized test administration, make them available and provide training to all teachers and administrators.

C. Each school year, school districts/charter schools shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices.

D. All teachers and test administrators shall conduct test preparation, test administration, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district/charter school rules and policies, Board rules, and state application of federal requirements for funding.

E. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;

(2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(3) change, alter, or amend any student answer sheet or any other standardized test materials at any time in such a way as to alter the student's intended response;

(4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test

publisher, including USOE, and school district/charter school administration;

(5) violate any specific test administration procedure or guideline specified in the test administration manual, or violate any state or school district/charter school standardized testing policy or procedure;

(6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;

F. Violation of any of these rules may subject licensed educators to possible disciplinary action under Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(I).

KEY: educational testing

August 7, 2007	**Art X Sec 3**
Notice of Continuation May 9, 2005	**53A-1-603(3)**
	53A-1-401(3)

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information;
(6) completion of employee background checks; and
(7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2006-07 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

L. "USOE" means Utah State Office of Education.

M. "Year" means both the school year and the fiscal year in Utah, which runs from July 1 through June 30.

N. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. January 24 - Adult Education - midyear report for current year.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;
(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 10, beginning with the 2007-08 school year (due July 15 for the 2006-07 school year)

(1) Bus Driver Credentials Report - for current year - Financial and Business Services;
(2) Classified Personnel Report - for prior year - Financial and Business Services;
(3) Data Clearinghouse File - final comprehensive update for prior year - Data Assessment, and Accountability;
(4) Driver Education Report - for prior year - Educator Quality;
(5) ESEA Choice and Supplemental Services Report - for prior year;
(6) Fee Waivers Report - for prior year;
(7) Fire Drill Compliance Statement - for prior year;
(8) Home Schooled Students Report - for prior year;
(9) Teacher Benefits Report - for prior year;
(10) Transportation - for prior year:
(a) Bus Inventory Report;
(b) Year End Transportation Statistics Report.

E. August 24 - Adult Education - final report for prior year.

F. September 15 - Membership Audit Report - for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;
(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year.
(2) YICSIS - update as of October 1 for current year.

I. November 1

(1) Data Clearinghouse File - optional revised final comprehensive update for prior year;
(2) Enrollment and Transfer Student Documentation Audit Report - for current year;
(3) Immunization Status Report - for current year;
(4) Transportation Statistics for state funding:
(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;
(b) Schedule B (Miscellaneous Expenditure Report) - for prior year.

J. November 15

(1) CACTUS - update for current year; and
(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report.

L. December 15 - Data Clearinghouse File - update as of December 1 for current year.

R277-484-4. Adjustments to Deadlines.

A. Deadlines that fall on a weekend, state holiday or Utah Education Association convention day in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance at the at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;
(2) The signatures of the LEA business administrator and the district superintendent or charter school director; and

(3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Data and Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 6 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

(1) June 29 CACTUS Update;

(2) July 10 Final Data Clearinghouse File - final comprehensive update for prior year beginning 2007-08 school year and July 15 for 2006-07 school year only - Data Assessment, and Accountability; and

(3) November 1 error corrected Data Clearinghouse File.

R277-484-5. Data Source for Accountability Reporting.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA; and

(3) submission of data files to the U.S. Department of Education via EDEN.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 7, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

KEY: data standards, reports, deadlines
August 7, 2007 **Art X Sec 3**
53A-1-401(3)
53A-1-301(2)(e)

R277. Education, Administration.
R277-510. Educator Licensing - Highly Qualified Assignment.
R277-510-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "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).

C. "Date of hire" means the date on which the initial employment contract is signed between educator and employer for a position requiring a professional educator license.

D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program, consistent with R277-503-1.E and R277-503-5.

E. "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) or 34 CFR 200.56.

F. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.

G. "Multiple subject teacher" means a teacher in a necessarily existent small school as defined under R277-445 or as a special education teacher defined under R277-510H, or in a Youth in Custody program as defined under R277-709 or a board-designated alternative school whose size meets necessarily existent small school criteria as defined under R277-445, who teaches two or more Core academic subjects defined under R277-510-1B or under R277-700.

H. "NCLB" means the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), 20 U.S.C. 7801.

I. "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445, teachers in alternative schools who meet the size criteria of R277-445, and teachers in youth in custody programs or to special educators seeking highly qualified status in mathematics, language arts, or science. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

J. "Teacher of record" for the purposes of this rule means the teacher to whom students are assigned for purposes of reporting for USOE data submissions.

K. "USOE" means the Utah State Office of Education.

L. "Veteran Teacher" means a teacher whose date of hire in a Utah public school was prior to July 1, 2005, and who held a level 1, 2, or 3 license at that time.

R277-510-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(1)(a) which directs the Board to establish rules setting minimum standards for educators who provide direct student services, 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 assignment to meet federal requirements for highly qualified status.

R277-510-3. NCLB Highly Qualified Assignments - Early Childhood Teachers K-3.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with an early childhood area of concentration; and

(3) at least one of the following:

(a) a passing score at the level designated by the USOE on a Board-approved subject area test; or

(b) a Level 2 license with documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8.

B. NCLB requirements do not apply to any pre-K assignment.

R277-510-4. NCLB Highly Qualified Assignments - Elementary Teachers 1-8.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with an elementary area of concentration; and

(3) at least one of the following:

(a) a passing score at the level designated by the USOE on a Board-approved subject area test; or

(b) a Level 2 license with documentation of satisfaction of veteran teacher requirements for the assignment as described in R277-510-8.

B. A teacher holding a license with an elementary area of concentration assigned to teach an NCLB core academic subject in a secondary school shall meet the requirements of R277-510-3(B).

R277-510-5. NCLB Highly Qualified Assignments - Secondary Teachers 6-12.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with a secondary area of concentration and endorsement in the content area assigned; and

(3) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area; or

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area; or

(c) a passing score at the level designated by the USOE on a Board-approved subject area test; if no Board-approved test is available, an endorsement is sufficient for highly qualified status; or

(d) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8.

B. An assignment in grades 7 or 8 given to a teacher holding an elementary area of concentration may be designated as NCLB highly qualified if the teacher holds an endorsement in the content area and meets one of the requirements of R277-510-5A(3) above.

C. These requirements are only applicable to NCLB core academic subject assignments.

D. Each NCLB core academic course assignment is subject to the above standards.

R277-510-6. NCLB Highly Qualified Assignments - Special Education Teachers.

A. For a special education teacher assignment in grades K-8, or K-12 teaching students who are assessed using the Utah Alternative Assessment, to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

(1) a bachelor's degree; and

(2) an educator license with a special education area of concentration; and

(3) any one of the following in the assignment content area:

(a) a passing score on a Board-approved elementary content test; or

(b) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or

(c) a university major degree, masters degree, doctoral degree, or National Board Certification and an endorsement in the content area; or

(d) a course work equivalent of a major degree (30 semester or 45 quarter hours) and an endorsement in the content area; or

(e) a passing score at the level designated by the USOE on a Board-approved subject area test and an endorsement in the content area.

(4) A special educator who would be NCLB highly qualified as a teacher of record in an elementary/early childhood regular education assignment is also NCLB highly qualified as a teacher of record in a special education assignment.

B. For a special education teacher assignment in grades 9-12 to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

(1) a bachelor's degree; and

(2) an educator license with a special education area of concentration; and

(3) any one of the following in the assignment content area:

(a) a passing score on a Board-approved fundamental multi-subject test; or

(b) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or

(c) a university major degree, masters degree, doctoral degree, or National Board Certification; or

(d) a course work equivalent of a major degree (30 semester or 45 quarter hours); or

(e) a passing score at the level designated by the USOE on a Board-approved subject area test.

C. IDEA may contain requirements for teacher qualifications in addition to the requirements of NCLB and this rule. R277-510 does not replace, supercede, or nullify any of those requirements.

R277-510-7. NCLB Highly Qualified Assignments - Small Schools Multiple Subject Teachers 7 - 12.

A. For a small school multiple subject teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with a secondary area of concentration; and

(3) an endorsement or a restricted endorsement in the assignment content area; and

(4) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification; or

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours); or

(c) a passing score at the level designated by the USOE on a Board-approved subject area test; or

(d) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or

(e) a passing score on a Board-approved fundamental multi-subject test.

B. The Director of Educator Quality Services at the Utah State Office of Education shall annually publish a list of qualifying small schools, consistent with R277-445.

R277-510-8. Highly Qualified Requirements for Assignment of Veteran Teachers.

A. Veteran teachers in Early Childhood and Elementary assignments who hold Early Childhood or Elementary areas of concentration may meet highly qualified requirements by:

(1) completion of an elementary or early childhood major or both from an accredited university; or

(2) a review of college and university transcripts that identify that credits have been earned in the following areas with academic grades of C or better:

(a) Nine semester hours of language arts/ reading or the equivalent as approved by the USOE; and

(b) six semester hours of physical/biological science or the equivalent as approved by the USOE; and

(c) nine semester hours of social sciences or the equivalent as approved by the USOE; and

(d) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

(e) three semester hours of arts or the equivalent as approved by the USOE.

B. Veteran teachers in secondary NCLB core subject assignments who hold a secondary area of concentration may meet highly qualified requirements by having:

(1) an endorsement in a subject area directly related to the teacher's academic major; or

(2) a current endorsement for the assignment and completion of 200 professional development points, accrued after the endorsement was approved by the USOE, directly related to the area of assignment. No more than 100 points may be earned for successful teaching in the related areas.

R277-510-9. LEA Highly Qualified Plans.

A. Each district and charter school shall submit a plan to the USOE describing strategies for progressing toward and maintaining the highly qualified status of all educator assignments to which this rule applies. Each plan shall be updated annually.

B. The USOE shall review district and charter school plans and provide technical support to districts and charter schools to assist them in carrying out their plans to the extent of staff/resources available.

C. The USOE shall set timelines for submission and review of district and charter school plans.

R277-510-10. Highly Qualified Time Lines.

A. NCLB requires that all NCLB core subject assignments meet highly qualified standards as of July 1, 2006. Utah school districts and charter schools shall work toward and have plans in place to ensure progress toward this requirement.

B. Documented determinations of highly qualified status under previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

R277-510-11. Highly Qualified Rules in Relation to Other Board Rules.

Other Board rules may include requirements related to licensure or educator assignment that do not specifically apply to NCLB highly qualified assignment status. R277-510 does not supercede, replace, or nullify any of these requirements.

KEY: educators, highly qualified
August 7, 2007

Art X Sec 3
53A-1-401(1)(a)
53A-1-401(3)

R277. Education, Administration.
R277-713. Concurrent Enrollment of High School Students in College Courses.
R277-713-1. Definitions.

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by school district or charter school receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and a USHE institution, to provide college level courses to high school students.

C. "Board" means the Utah State Board of Education.

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and a school district/public school. Students continue to be enrolled in public schools, counted in Average Daily Membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.

F. "USHE" means the Utah System of Higher Education.

G. "USOE" means the Utah State Office of Education.

R277-713-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

R277-713-3. Student Eligibility.

A. Schools and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.

B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

R277-713-4. Courses and Student Participation.

A. Course registration and the awarding of USHE institution credit for concurrent enrollment courses are the province of colleges and universities governed by USHE policies.

B. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

C. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

D. Only courses taken from a master list maintained by the Curriculum Section at the USOE shall be reimbursed from state concurrent enrollment funds.

E. Beginning with the 2008-09 school year, the Board of Regents, after consultation with school districts/charter schools, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

F. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and school district or charter school concurrent enrollment administrator. Concurrent enrollment funding is not intended for unilateral parent/student initiated college attendance or course-taking.

G. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers.

H. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate USHE institution, shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.

I. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

R277-713-5. Program Delivery.

A. Schools within the USHE that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved, consistent with Section 53A-17a-120(2)(a).

C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

D. Courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises are not eligible for concurrent enrollment funding. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

E. Concurrent enrollment is intended primarily for students in their last two years of high school. Participation by students before their junior year shall be approved by both the public school and the USHE institution, and be consistent with a student's SEP/SEOP.

F. State reimbursement to school districts for concurrent enrollment courses may not exceed 30 semester hours per

student per year.

G. Public schools/school districts shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

A. Tuition or fees may not be charged to high school students for participation in this program consistent with Section 53A-15-101(6)(b)(iii).

B. Students may be assessed a one-time enrollment charge per institution.

C. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

D. All students' costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

E. The school district/school shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.

F. Credit:

(1) A student shall receive high school credit for concurrent enrollment classes that is consistent with the district policies for awarding credit for graduation.

(2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

(4) Concurrent enrollment course credit shall count toward high school graduation requirements as well as for college credit.

R277-713-7. Faculty Requirements.

A. Nomination of adjunct faculty is the joint responsibility of the participating local school district(s) and the participating USHE institution. Public education teachers shall have secondary endorsements in the subject area(s) to be taught and meet highly qualified standards for their assignment(s) consistent with R277-510. Final approval of the adjunct faculty shall be determined by the appropriate USHE institution.

B. USHE institution faculty beginning their USHE employment in the 2005-06 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) USHE institutions and secondary schools shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse districts for repeated concurrent enrollment courses. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

C. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.

D. District use of state funds for concurrent enrollment is limited to the following:

(1) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of district or school personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) districts/charter schools may purchase classroom equipment required to conduct concurrent enrollment courses, in the aggregate, not to exceed ten (10) percent of a district's/charter school's annual allocation of concurrent enrollment monies.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

E. School districts/charter schools shall provide the USOE with end-of-year expenditures reports itemized by the categories identified in R277-713-8E.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

A. Collaborating school districts/charter schools and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.

(a) each school district/charter school shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.

(b) each school district/charter school shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7B and C.

B. A school district/charter school shall provide a copy of the annual contract entered into between a school district/charter school and a USHE institution for the upcoming school year no later than May 30 annually.

C. The annual concurrent enrollment agreement between a USHE institution and a school district/charter school who has responsibility shall:

(1) provide for parental permission for students to

participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses count toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

D. This rule shall be effective on the date posted with the Division of Administrative Rules, and shall apply to students who enroll in course work beginning with the 2005-2006 school year, and continuing thereafter.

KEY: students, curricula, higher education
August 7, 2007 **Art X Sec 3**
Notice of Continuation September 12, 2002 **53A-17a-120**
53A-1-402(1)(c)
53A-1-401(3)

R380. Health, Administration.
R380-1. Petitions for Department Declaratory Orders.
R380-1-1. Authority.

As required by Section 63-46b-21, and as authorized by Sections 26-1-5(3) and 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department. R380-5 governs petitions for declaratory orders concerning orders issued by committees having statutory authority to issue orders.

R380-1-2. Petition Procedure.

(1) Any person or government agency directly affected by a statute administered by the Department, a rule promulgated by the Department or any of its committees having statutory authority to make rules, or an order issued by the Department may petition for a declaratory order.

(a) For petitions seeking a declaratory order determining the applicability of statutes administered by the Department, the petitioner shall file the petition with the Executive Director.

(b) For petitions seeking a declaratory order determining the applicability of rules promulgated by the Department or any of its committees, the petitioner shall file the petition with the Department division that administers the program to which the rule pertains.

(c) For petitions seeking a declaratory order determining the applicability of orders promulgated by the Department, and not by a committee given statutory authority to issue orders, the petitioner shall file the petition with the Department division that administers the program associated with the subject matter of the order.

R380-1-3. Petition Form.

The petition shall:

(1) be clearly designated as a request for a declaratory order;

(2) identify the statute, rule, or order to be reviewed;

(3) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the statute, rule, or order is to be reviewed;

(4) describe the reason or need for the applicability review;

(5) identify the person or agency directly affected by the statute, rule, or order;

(6) include an address and telephone where the petitioner can be reached during regular work days; and

(7) be signed by the petitioner.

R380-1-4. Petition Review and Recommendation.

(1) The Executive Director may determine the applicability of a statute, rule or order or may refer the request to the particular committee having statutory authority to make rules if such a committee exists for the statute, or may refer the request to a division or other administrative unit within the Department that more closely administers the statute.

(2) The committee to which a petition has been referred shall, without undue delay, make a written recommendation on the disposition of the petition to the Executive Director.

R380-1-5. Petition Disposition.

(1) The committee or administrative unit within the department making the recommendation to the Executive Director under this rule shall:

(a) review and consider the petition;

(b) prepare a recommended declaratory order stating:

(i) the applicability or non-applicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(iii) any requirements imposed on the agency, the petitioner, or any person as a result of the declaratory order.

(2) The person or committee making the recommendation under this rule may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with other Department staff, committee members, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

(3) The Executive Director may modify the recommendation, refer the recommendation back for modification, or reject the recommendation. The Executive Director shall prepare the final declaratory order without undue delay and send the petitioner a copy of the order when completed.

KEY: administrative procedure, rules and procedures, declaratory orders

1992	**63-46b-21**
Notice of Continuation August 20, 2007	**26-1-5(3)**
	26-1-17

R380. Health, Administration.
R380-5. Petitions for Declaratory Orders on Orders Issued by Committees.
R380-5-1. Authority.

As required by Section 63-46b-21, and as authorized by Sections 26-1-5(3) and 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders. R380-1 governs petitions for declaratory orders concerning the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department.

R380-5-2. Petition Procedure.

Any person or government agency directly affected by an order issued by a committee having statutory authority to issue orders may petition for a declaratory order concerning the order issued by the committee. The petitioner shall file the petition with the Department division that administers the program over which the committee has statutory authority to issue orders.

R380-5-3. Petition Form.

The petition shall:

(1) be clearly designated as a request for a declaratory order;

(2) identify the order to be reviewed;

(3) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the order is to be reviewed;

(4) describe the reason or need for the applicability review;

(5) identify the person or agency directly affected by the order;

(6) include an address and telephone where the petitioner can be reached during regular work days; and

(7) be signed by the petitioner.

R380-5-4. Petition Review and Recommendation.

(1) The statutory committee may determine the applicability of the order, may refer the request to the division or other administrative unit within the Department that administers the program over which the committee has statutory authority to issue orders for a recommended decision, or may refer the request to the division or other administrative unit within the Department that administers the program over which the committee has statutory authority to issue orders for a final decision.

(2) The division or other administrative unit within the Department that administers the program to which a petition has been referred shall, without undue delay, make a written recommendation on the disposition of the petition to the committee, or make a decision on the petition, depending on the delegation from the committee.

R380-5-5. Petition Disposition.

(1) The committee or administrative unit within the department shall:

(a) review and consider the petition;

(b) prepare a recommended declaratory order stating:

(i) the applicability or non-applicability of the order at issue;

(ii) the reasons for the applicability or non-applicability of the order; and

(iii) any requirements imposed on the agency, the petitioner, or any person as a result of the declaratory order.

(2) The committee or the administrative unit within the Department may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with other Department staff, committee members, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

(3) For petitions which a committee has referred to an administrative unit within the Department that administers the program for a recommended decision, the committee may modify the recommendation, refer the recommendation back for modification, or reject the recommendation. The committee shall prepare the final declaratory order without undue delay and send the petitioner a copy of the order when completed.

KEY: administrative procedure, rules and procedures, declaratory orders

1992	**63-46b-21**
Notice of Continuation August 20, 2007	**26-1-5(3)**
	26-1-17

R380. Health, Administration.
R380-10. Informal Adjudicative Proceedings.
R380-10-1. Authority and Purpose.

This rule sets forth informal adjudicative procedures for the Department of Health and committees created within the Department under Section 26-1-7. Utah Code Sections 26-1-5, 26-1-17, and 26-1-24, and Title 63, Chapter 46b authorize it.

R380-10-2. Definitions.

For purposes of this rule, the definitions in Section 63-46b-2 of the Utah Administrative Procedures Act apply, in addition:

(1) "Agency" means the Department of Health bureau, office, or division that most closely administers the program under which the agency action is taken or which is responsible to administer the program that deals with the request for agency action.

(2) "Agency action" means an agency determination after conducting adjudicative proceedings by agency staff of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63-46b-1(2).

(3) "Initial agency determination" means a decision without conducting adjudicative proceedings by agency staff of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63-46b-1(2).

(4) "Notice of agency action" means the formal notice that meets the requirements of Subsection 63-46b-3(2) which an agency or policy making committee issues to commence an adjudicative proceeding.

(5) "Presiding officer" means the individual designated by the Department or by a policy making committee in accordance with R380-10-5 or by statute to conduct an adjudicative proceeding.

(6) "Policy making committee" means a committee that is created under Section 26-1-7 and to which a statute delegates authority to make rules.

(7) "Request for agency action" means the formal written request that meets the requirements of Subsection 63-46b-3(3) and that clearly expresses a request that the agency commence adjudicative proceedings.

R380-10-3. Form of Proceeding and Applicability.

(1) The Department of Health prefers to resolve disputes at the lowest level. This rule does not foreclose simple resolution through discussion and negotiation between an agency and any person affected by an agency action.

(2) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63-46b-4(3), all Department of Health adjudicative proceedings are informal proceedings.

(3) Unless otherwise designated by rule or statute or converted pursuant to Subsection 63-46b-4(3), all adjudicative proceedings before any policy making committee and all appeals to the Executive Director are designated as formal proceedings.

(4) The provisions of this rule do not govern actions or proceedings which a federal statute or regulation requires to be conducted solely in accordance with federal procedures. If federal statute or regulation requires a modification to these procedures, the federal procedures prevail.

(5) To the extent that this rule conflicts with a similar rule adopted by an agency within the Department that governs adjudicative proceedings, the conflicting provisions of the other rule govern.

R380-10-4. Adjudicative Authority.

(1) An agency's or policy making committee's authority to decide an adjudicative matter is limited to the specific subject matter of the program that it administers.

(2) If an adjudicative matter is not solely within the program administration of a single agency or policy making committee, the executive director may appoint a presiding officer for the matter.

(3) A committee that is not a policy making committee has no adjudicative authority, except as it may be designated to serve as a presiding officer or to otherwise render a recommended decision.

R380-10-5. Presiding Officer.

The agency head shall serve as the presiding officer for all informal proceedings, except that the agency head may designate a presiding officer as approved by the executive director. A policy making committee may designate as a presiding officer:

(1) an individual from the committee;

(2) an individual from Department staff as approved by the executive director;

(3) some other qualified and experienced person approved by the executive director.

R380-10-6. Commencement of Proceedings, Response.

(1) If a person is aggrieved by an initial agency determination, he may file with the agency a request for agency action within the shorter of 30 calendar days of either receiving the initial agency determination or the agency's mailing of the initial agency determination.

(2) If the informal adjudicative proceeding is commenced by a notice of agency action, all parties in the action, except the agency or policy making committee that initiates the agency action, shall file an answer or other pleading responsive to the allegations contained in the notice of agency action.

(3) If the informal adjudicative proceeding is commenced by a request for agency action, the agency or policy making committee that performed the agency action need not file an answer or other responsive pleading. However, the particular agency or policy making committee must consider the request and grant or deny it or set the request for further proceedings as required by Section 63-46b-3(d).

R380-10-7. Adjudicative Hearings.

(1) The agency or policy making committee before which the matter resides shall hold a hearing if:

(a) a statute or other rule requires it; or

(b) another rule permits it and a party requests it with the request for agency action or within 25 calendar days of the mailing of the notice of agency action, or within 25 days of notice of the agency's setting a matter for informal adjudicative proceedings, or within another period as prescribed by rule.

(2) If any party requests a hearing and if there is a disputed issue of fact, the presiding officer shall conduct an evidentiary hearing. In any evidentiary hearing, the parties named in the notice of agency action or in the request for agency action may testify, present evidence, and comment on the issues. If there is no disputed issue of fact, the presiding officer may determine all issues in the adjudicative proceeding based on oral or written argument.

(3) Hearings may be held only after timely notice to all parties.

(4) All hearings are open to all parties, but the hearing officer may take appropriate measures to preserve the integrity of the hearing, exclude witnesses if requested by a party, and protect the confidentiality of records or other information protected by law.

(5) Discovery is prohibited, but the agency may issue

subpoenas or other orders to compel production of necessary evidence.

(6) All parties may access information contained in the agency's files and all materials and information gathered in any investigation, to the extent permitted by law.

(7) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or regulation requires that a state permit intervention.

(8) All parties to the proceedings are responsible to assure the appearance of witnesses and for the costs of appearance of witnesses.

(9) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that states the following:

(a) the decision;

(b) the reasons for the decision;

(c) a notice of any right of administrative or judicial review available to the parties; and

(d) the time limits for filing an appeal or requesting a review.

(10) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(11) The agency shall promptly mail a copy of the presiding officer's order to each party. (12) All hearings shall be tape recorded or recorded by a shorthand reporter at the agency's expense.

(a) If all parties agree, the hearing may be recorded by a certified shorthand reporter at the requesting party's expense. The certified short hand reporter's transcript is the official transcript of the hearing and is the property of the agency.

(b) Any party, at its own expense, may have a reporter who is approved by the agency prepare a transcript from the agency's record of the hearing; however, the agency's or policy making committee's record of the hearing is the official record of the hearing.

R380-10-8. Presiding Officer's Decision.

In all instances where an agency head has designated a person to serve as presiding officer in an adjudicative proceeding, the presiding officer's decision is a recommended decision to the agency head and the agency head may accept, reverse, or modify the presiding officer's order and may remand the order to the presiding officer for further proceedings. If the agency head reverses or modifies the presiding officer's order, the agency head's order shall contain revised findings of fact and conclusions of law as needed, based on the record before the presiding officer and as may be supplemented before the agency head.

R380-10-9. Agency Review.

Any party may seek review of an agency action by filing a written request as provided in Section 63-46b-12. For decisions that are appealable to a policy making committee, the party must file the request with the agency that administers the program that deals with the matter. For all other appeals, the party must file the request with the Executive Director.

KEY: administrative procedure, health administration

1993	**26-1-5**
Notice of Continuation August 20, 2007	**26-1-17**
	26-1-24
	63-46b

R380. Health, Administration.
R380-100. Americans with Disabilities Act Grievance Procedures.
R380-100-1. Authority and Purpose.

(1) This rule is promulgated under authority of Section 26-1-17 and Section 63-46a-3(2). As required by 28 CFR 35.107, the Utah Department of Health, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 and 28 CFR Part 35, 1991 edition.

(2) The provisions of 28 CFR 35 implement Title II of the Americans with Disabilities Act of 1990, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department of Health.

R380-100-2. Definitions.

(1) "ADA Coordinator" means the head of the Employee Assistance Section of the Office of Administrative Services within the Department of Health.

(2) "Disability" means, with respect to a qualified individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Qualified Individual with a Disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Health.

R380-100-3. Filing of Complaints.

(1) Any qualified individual with a disability may file a complaint within 180 days of the alleged noncompliance with the provisions Title II of the Americans with Disabilities Act of 1990 or the regulations promulgated thereunder. Complaints should be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the effective date of this rule. The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act and information otherwise protected by statute, rule, regulation, or other law.

(2) The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(3) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(4) If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

R380-100-4. Investigation of Complaints.

(1) The ADA coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in R380-100-3(3) of this rule if it is not made available by the complainant.

(2) The coordinator may seek assistance from the Department's legal, human resource, and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator may also consult with the division or office head in reaching a recommendation. Before making any recommendation that would (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation, (b) facility modifications, or (c) reclassification or reallocation in grade, the coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

R380-100-5. Recommendation and Decision.

(1) Within 15 business days after receiving the complaint, the ADA Coordinator shall recommend to the division or office head what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the coordinator is unable to make a recommendation within the 15 business day period, he shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The division or office head may confer with the ADA coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The division or office head shall make his decision within 15 business days. The division or office head shall take all reasonable steps to implement his decision. The decision shall be in writing or in another accessible format suitable to the complainant.

R380-100-6. Appeals.

(1) The complainant may appeal the division or office head's decision to the executive director within ten business days from the receipt of the decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator may not also be the executive director's designee for the appeal.

(4) The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without undue hardship to the Department.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the division or office director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. Before making any decision that would (a) involve an expenditure of funds beyond

what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation, (b) facility modifications, or (c) reclassification or reallocation in grade, the executive director shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

(6) The executive director shall issue his decision within 15 business days after receiving the appeal. It shall be in writing or in another accessible format suitable to the complainant.

(7) If the executive director or his designee is unable to reach a decision within the 15 business day period, he shall notify the individual in writing or by another accessible format suitable to the complainant why the decision is being delayed and the additional time needed to reach a decision.

R380-100-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures; the Federal ADA Complaint Procedures; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: grievance procedures, disabled persons
1992 26-1-17
Notice of Continuation August 20, 2007 63-46a-3(2)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60B. Preferred Drug List.
R414-60B-1. Introduction and Authority.

(1) The Division of Health Care Financing (DHCF) has established a Preferred Drug List (PDL) to operate within the pharmacy program and at the Division's discretion.

(2) The Preferred Drug List is authorized under Section 26-18-2.4.

R414-60B-2. Client Eligibility Requirements.

A PDL is available to categorically and medically needy individuals.

R414-60B-3. Program Access Requirements.

A PDL is established for certain therapeutic classes of drugs and is available through the point of sale system of any Medicaid provider. At its discretion, DHCF establishes and implements the scope and therapeutic classes of drugs.

R414-60B-4. Service Coverage.

(1) Upon the recommendation of the Pharmacy and Therapeutics (P&T) Committee, DHCF pharmacy staff select the therapeutic classes and select the most clinically effective and cost effective drug or drugs within each class.

(2) The preferred drug or drugs are dispensed without prior authorization requirements.

(3) All other non-preferred drugs within each therapeutic class require prior authorization, unless the prescriber writes "medically necessary - dispense as written" on the prescription and has justification in the patient's medical record substantiating the medical necessity of the non-preferred drug.

R414-60B-5. P&T Committee Composition and Membership Requirements.

(1) The DHCF Director shall appoint the members of the P&T Committee for a two-year term. DHCF has the option of making the appointments renewable.

(2) DHCF staff request nominations for appointees from professional organizations within the state. These nominations are then given to the Director for selection and appointment.

(a) If there are no recommendations within 30 days of a request, DHCF may submit a list of potential candidates to professional organizations for consideration.

(b) If there are no willing nominees for appointment from professional organizations, the Director may seek recommendations from DHCF staff.

(3) The P&T Committee consists of one physician from each of the following specialty areas:

(a) Internal Medicine;
(b) Family Practice Medicine;
(c) Psychiatry; and
(d) Pediatrics.

(4) The P&T Committee consists of one pharmacist from each of the following areas:

(a) Pharmacist in Academia;
(b) Independent Pharmacy;
(c) Chain Pharmacy; and
(d) Hospital Pharmacy.

(5) DHCF shall appoint one voting committee manager.

(6) Up to two non-voting ad hoc specialists participate on the committee at the committee's invitation.

(7) An individual considered for nomination must demonstrate no direct connection to and must be independent of the pharmaceutical manufacturing industry.

(8) The P&T Committee shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the committee.

(9) When a vacancy occurs on the committee, the Director shall appoint a replacement for the unexpired term of the vacating member.

R414-60B-6. P&T Committee Responsibilities and Functions.

(1) Under Section 26-18-106, the P&T Committee functions as a professional and technical advisory board to DHCF in the formulation of a PDL.

(2) P&T Committee recommendations must:

(a) represent the majority vote at meetings in which a majority of voting members are present; and

(b) include votes by at least one committee member from the group identified in Subsection R414-60B-5(3) and one member from the group identified in Subsection R414-60B-5(4)

(3) The P&T Committee manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record committee business, notify the Director when vacancies occur, provide meeting notices, and coordinate functions between the committee and DHCF.

(4) Notice for a P&T Committee meeting shall be given in accordance with Section 52-4-202.

(5) The P&T Committee chairperson shall conduct all meetings. The P&T Committee manager shall conduct meetings if the chairperson is not present.

(6) P&T Committee meetings shall occur at least quarterly.

(7) P&T Committee meetings shall be open to the public except when meeting in executive session.

(8) The committee shall:

(a) review drug classes and make recommendations to DHCF for PDL implementation;

(b) review new drugs, new drug classes or both, to make recommendations to DHCF for PDL implementation;

(c) review drugs or drug classes as DHCF assigns or requests;

(d) review drugs within a therapeutic class and make a recommendation to DHCF for the preferred drug or drugs within the therapeutic class; and

(e) review evidence based criteria and drug information.

R414-60B-7. Reimbursement.

Pharmaceuticals are reimbursed using the established fee schedule in the Utah Medicaid State Plan, which is incorporated by reference in Section R414-1-5.

KEY: Medicaid
August 14, 2007 **26-18-3**
26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community-Based Services Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, Effective July 1, 2003;

(2) Waiver for Individuals Age 65 or Older, Effective July 1, 2005;

(3) Waiver for Individuals with Acquired Brain Injuries, Effective July 1, 2004;

(4) Waiver for Individuals with Physical Disabilities, Effective July 1, 2006;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, Effective July 1, 2005;

(6) New Choices Waiver, Effective April 1, 2007.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Health Care Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid
June 26, 2007 26-18-3
Notice of Continuation March 11, 2005

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-12. Emergency Medical Services Training and Certification Standards.
R426-12-100. Authority and Purpose.

This rule is established under Title 26, Chapter 8a to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and recertification of individuals who provide emergency medical service and for those providing instructions and training to pre-hospital emergency medical care providers.

R426-12-101. Written and Practical Test Requirements.

(1) The Department shall:

(a) develop written and practical tests for each certification; and

(b) establish the passing score for certification and recertification written and practical tests.

(2) The Department may administer the tests or delegate the administration of any test to another entity.

(3) The Department may release only to the individual who took the test and to persons who have a signed release from the individual who took the test:

(a) whether the individual passed or failed a written or practical test; and

(b) the subject areas where items were missed on a written or practical test.

R426-12-102. Emergency Medical Care During Clinical Training.

A student enrolled in a Department-approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course, perform activities delineated within the training curriculum that otherwise require certification to perform.

R426-12-103. Certification at a Lower Level.

(1) An individual who has taken an Emergency Medical Technician-Intermediate Advanced (EMT-IA) course, but has not been recommended for certification, may request to become certified at the Emergency Medical Technician-Intermediate (EMT-I) level if:

(a) the EMT-IA course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the EMT-I level as required by R426-12-300(2); and

(b) the individual successfully completes all requirements of R426-12-301, except for R426-12-301(2)(a).

(2) An individual who has taken a Paramedic course, but has not been recommended for certification, may request to become certified at the EMT-IA or EMT-I levels if:

(a) the paramedic course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the EMT-I level as required by R426-12-300(2) or the EMT-IA level as required by R426-12-400(2), as appropriate; and

(b) the individual successfully completes all requirements of:

(i) R426-12-301, except for R426-12-301(2)(a) for EMT-I; or

(ii) R426-12-401, except for R426-12-401(2)(a) for EMT-IA respectively.

R426-12-200. Emergency Medical Technician-Basic (EMT-B) in Requirements and Scope of Practice.

(1) The Department may certify as an EMT-B an individual who meets the initial certification requirements in R426-12-201.

(2) The Committee adopts as the standard for EMT-Basic training and competency in the state, the following affective, cognitive and psychomotor objectives for patient care and treatment from the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum" (EMT-B Curriculum), which is incorporated by reference, with the exceptions of Module 8: Advanced Airway and Appendices C, D, J. and K.

(3) An EMT-B may perform the skills as described in the EMT-B Curriculum, as adopted in this section.

R426-12-201. EMT-B Initial Certification.

(1) The Department may certify an EMT-B for a four year period.

(2) An individual who wishes to become certified as an EMT-B must:

(a) successfully complete a Department-approved EMT-B course as described in R426-12-200(2);

(b) be able to perform the functions listed in the objectives of the EMT-B Curriculum adopted in R426-12-200(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives listed in the adopted EMT-B Curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-B certification;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit documentation of having completed within the prior two years a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(h) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-B course;

(i) within 120 days after the official course end date the applicant must successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

R426-12-202. EMT-B Certification Challenges.

(1) The Department may certify as an EMT-B, a registered nurse licensed in Utah, a physician assistant licensed in Utah, or a physician licensed in Utah who:

(a) is able to demonstrate knowledge, proficiency and competency to perform all the functions listed in the EMT-B Curriculum as verified by personal attestation and successful demonstration to a currently certified course coordinator and an off-line medical director of all cognitive, affective, and psychomotor skills and objectives listed in the EMT-B Curriculum;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols; and

(iii) the role and responsibilities of an EMT-B;

(c) maintains and submits documentation of having completed within the prior two years, a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater; and

(d) is 18 years of age or older.

(2) To become certified, the applicant must:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit a favorable recommendation from a currently certified course coordinator attesting to competency of all knowledge and skills contained within the EMT-B Curriculum.

(c) submit the applicable fees and a completed application, including social security number, signature, and, proof of current Utah license as a Registered Nurse, a Physician Assistant, or a Medical Doctor;

(d) within 120 days after submitting the challenge application, successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary;

(e) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within 120 days was due to circumstances beyond the applicants control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years; and

(g) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to submitting the application.

R426-12-203. EMT-B Reciprocity.

(1) The Department may certify an individual as an EMT-B an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years, a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

R426-12-204. EMT-B Recertification Requirements.

(1) The Department may recertify an EMT-B for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years, a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination; and

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(f) provide documentation of completion of 100 hours of Department-approved CME meeting the requirements of subsections (3), (4), (5), (6), and (7).

(3) The EMT-B must complete the CME throughout each of the prior four years.

(4) The EMT-B must take at least 25 elective hours and the following 75 required CME hours by subject:

(a) Well being of the EMT - 2 hours;

(b) Infection Control - 2 hours;

(c) Airway - 4 hours;

(d) Patient Assessment - 10 hours;

(e) Communications and Documentation - 4 hours;

(f) Pharmacology and Patient Assisted Medications - 8 hours;

(g) Medical Emergencies: Cardiac and Automatic External Defibrillation - 6 hours;

(h) Medical Emergencies - 7 hours;

(i) Trauma (must include simulated bleeding, shock, soft tissue, burns, kinetics, musculoskeletal, head and spine, eyes, face, chest, splinting and bandaging - 12 hours;

(j) Pediatric Patients - 8 hours;

(k) Obstetrics and Gynecology - 4 hours;

(l) Operations (must include lifting and moving, ambulance operations, extrication, triage - 4 hours; and

(m) HAZMAT awareness - 4 hours.

(5) An EMT-B may complete CME hours through the methodologies listed in this subsection. All CME must be related to the required skills and knowledge of an EMT. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction. Limitations and special requirements are listed with each methodology.

(a) Workshops and seminars related to the required skills and knowledge of an EMT and approved for CME credit by the Department or the Continuing Education Coordinating Board for EMS (CECBEMS).

(b) Local medical training meetings.

(c) Demonstration or practice sessions.

(d) Medical training meetings where a guest speaker presents material related to emergency medical care.

(e) Actual hours the EMT-B is involved in community emergency exercise and disaster drills. Up to 20 hours are creditable during a recertification period for participation in exercises and drills.

(f) Teaching the general public (schools, scouts, clubs, or church groups) on any topic within the scope of the EMT-B practice. Up to 15 hours are creditable during a certification period for teaching classes.

(g) Viewing audiovisuals (films, videotapes, etc.) which illustrate and review proper emergency care procedures. The

EMT-B must view the audiovisual material in the presence of a training officer. Up to 10 hours are creditable during a certification period using audiovisuals.

(h) Completing college courses in topics such as biology, chemistry, anatomy and physiology. Other college courses relating to the scope and practice of an EMT-B may be creditable, but only with the approval of the Department. If in doubt, the EMT-B should contact the Department. Up to 10 hours are creditable during a certification period for college courses.

(i) Up to 16 hours of CPR training are creditable during a certification period.

(j) Computer and internet-based training that illustrates, drills, provides interactive use, or demonstrates proper emergency care procedures. The training must be approved by the CECBEMS or the Department. Up to 25 hours are creditable during a certification period using computer and internet-based training.

(k) Completing tests related to the EMT-B scope of practice in EMS-related journals or publications. Up to five hours are creditable during a certification period for completing tests from journals and publications.

(6) The EMT-B must complete the following skills at least two times as part of the CME training listed in subsections (4) and (5):

(a) bandaging of the arm, elbow, shoulder, neck, top of head, cheek, protruding eye, ear, and open chest wound;

(b) splinting using hare traction or sager splint (choice based upon availability of equipment);

(c) splinting of at least one upper and lower extremity;

(d) cervical and spinal immobilization using c-collar, long board, head stabilization equipment (utilize available equipment) and straps;

(e) patient assisted medications: nitroglycerin, pre-loaded epinephrine, inhaler, glucose, activated charcoal, and aspirin;

(f) pediatric immobilization: in a car seat and backboard;

(g) insertion of nasopharyngeal and oropharyngeal airways; and

(h) defibrillation of a simulated patient in cardiac arrest using an AED.

(7) An EMT-B who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMT-B's completion of the recertification requirements. An EMT-B who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(8) Each EMT-B is individually responsible to complete and submit the required recertification material to the Department. Each EMT-B should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMT-B's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(9) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMT-B; however, the EMT-B remains responsible for a timely and complete submission.

(10) The Department may shorten recertification periods. An EMT-B whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(11) The Department may not lengthen certification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

R426-12-205. EMT-B Lapsed Certification.

(1) An individual whose EMT-B certification has expired for less than one year may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become certified. The individual's new expiration date will be four years from the old expiration date.

(2) An individual whose certification has expired for more than one year must take an EMT-B course and reapply for initial certification.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMT until the individual completes the recertification process.

R426-12-206. EMT-B Testing Failures.

(1) An individual who fails any part of the EMT-B certification or recertification written or practical examination may retake the EMT-B examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete EMT-B training course to be eligible for further examination.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

R426-12-300. Emergency Medical Technician-Intermediate (EMT-I) Requirements and Scope of Practice.

(1) The Department may certify as an EMT-I, an EMT-B who:

(a) meets the initial certification requirements in R426-12-301; and

(b) has 12 months of field experience as a certified EMT-B, six months of which the Department may waive upon a written request from the off-line medical director showing that there is a shortage of EMT-Is to serve the area.

(2) The Committee adopts as the standard for EMT-I training and competency in the state the following affective, cognitive, and psychomotor objectives for patient care and treatment from the 1998 United States Department of Transportation's "Emergency Medical Technician-Intermediate Training Program: National Standard Curriculum" (EMT-I Curriculum): 1-1, 1-3, 1-4, 2-1, 3-2, 3-3, 3-5, 4-2, 5-1, 5-2, 5-3, 5-4, 5-5, 6-3, which is incorporated by reference, with the exception of the following objectives : 1-1.18-24, 1-1.54, 1-3.14-15, 1-3.17, 1-4.18, 1-4.24-25, 1-4.38, 2-1.7-8, 2-1.21, 2-1.33, 2-1.82-83, 2-1.92, 2-1.94, 2-1.96, 4-2.14-16, 5-1.3-5, 5-2.6-11, 5-2.13-14, 5-2.16-18, 5-2.20, 5-2.22-33, 5-2.39, 5-2.41, 5-2.44-46, 5-3.5-16, 5-4.3-5, 5-4.8-11, 5-5.3, 5-5.8-9, and 5-5.13,

(3) In addition to the skills that an EMT-B may perform, an EMT-I may perform the adopted skills described in section R426-12-300(2).

R426-12-301. EMT-I Initial Certification.

(1) The Department may certify an EMT-I for a four year period.

(2) An individual who wishes to become certified as an EMT-I must:

(a) successfully complete a Department-approved EMT-I course as described in R426-12-300(2);

(b) be able to perform the functions listed in the objectives of the EMT-I Curriculum adopted in R426-12-300(2) as verified by personal attestation and successful accomplishment during

the course of all cognitive, affective, and psychomotor skills and objectives.

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-I certification;

(d) be currently certified as an EMT-B;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit documentation of having completed within the prior two years a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(h) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-I course; and

(i) within 120 days after the official course end date the applicant must, successfully complete the Department written and practical EMT-I examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(4) If an individual's basic EMT certification lapses before he has completed all course requirements for an EMT-I, the individual must recertify as an EMT-B, including a practical test and CME documentation, before he can certify as an EMT-I. The individual may take the EMT-I written certification test to satisfy the written EMT-Basic recertification and EMT-I written certification requirements.

R426-12-302. EMT-I Reciprocity.

(1) The Department may certify as an EMT-I an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater to than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years, a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs;

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

R426-12-303. EMT-I Recertification Requirements.

(1) The Department may recertify an EMT-I for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years, a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(d) submit a statement from the EMS provider organization or a physician, confirming the applicant's results of a TB examination

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(f) submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-I skills:

(i) initiating and terminating intravenous infusion;

(ii) completion of pediatric vascular access skills station;

(iii) insertion and removal of intraosseous needle;

(iv) insertion and removal of endotracheal tube;

(v) administration of medications via intramuscular, subcutaneous, and intravenous routes; and

(vi) EKG rhythm recognition; and

(g) provide documentation of completion of 100 hours of Department-approved CME meeting the requirements of subsections (3), (4), (5), (6), (7) and (8).

(3) The EMT-I must complete the CME throughout each of the prior four years.

(4) The EMT-I must take at least 25 elective hours and the following 75 required CME hours by subject:

(a) Foundations of EMT-Intermediate - 4 hours;

(b) Pharmacology - 5;

(c) Venous Access and Medication Administration - 5 hours;

(d) Airway - 8 hours;

(e) Techniques of Physical Examination - 4 hours;

(f) Patient Assessment - 2 hours;

(g) Clinical Decision Making - 4 hours

(h) Trauma Systems and Mechanism of Injury - 3 hours;

(i) Hemorrhage and Shock - 4 hours;

(j) Burns - 3 hours;

(k) Thoracic Trauma - 3 hours;

(l) Respiratory - 2 hours;

(m) Cardiac - 6 hours;

(n) Diabetic - 2 hours;

(o) Allergic Reactions - 2 hours;

(p) Poisoning - 2 hours;

(q) Environmental Emergencies - 2 hours;

(r) Gynecology - 2 hours;

(s) Obstetrics - 2 hours;

(t) Neonatal resuscitation - 4 hours; and

(u) Pediatrics - 6 hours.

(5) The Department strongly suggests that the 25 elective hours be in the following topics:

(a) Anatomy and Physiology;

(b) Assessment Based Management;
(c) Behavioral Emergencies;
(d) Communication;
(e) Documentation;
(f) Geriatrics;
(g) HAZMAT;
(h) History Taking;
(i) Mass Casualty Incident;
(j) Medical Incident Command;
(k) Neurological Emergencies;
(l) Non-Traumatic Abdominal Emergencies; and
(m) Trauma Practical Lab.

(6) An EMT-I may complete CME hours through the methodologies listed in this subsection. All CME must be related to the required skills and knowledge of an EMT. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction. Limitations and special requirements are listed with each methodology.

(a) Workshops and seminars related to the required skills and knowledge of an EMT and approved for CME credit by the Department or the CECBEMS.

(b) Local medical training meetings.

(c) Demonstration or practice sessions.

(d) Medical training meetings where a guest speaker presents material related to emergency medical care.

(e) Actual hours the EMT-I is involved in community emergency exercise and disaster drills. Up to 20 hours are creditable during a recertification period for participation in exercises and drills.

(f) Teaching the general public (schools, scouts, clubs, or church groups) on any topic within the scope of the EMT-I practice. Up to 15 hours are creditable during a certification period for teaching classes.

(g) Viewing audiovisuals (films, videotapes, etc.) which illustrate and review proper emergency care procedures. The EMT-I must view the audiovisual material in the presence of a training officer. Up to 10 hours are creditable during a certification period using audiovisuals.

(h) Completing college courses in topics such as biology, chemistry, anatomy and physiology. Other college courses relating to the scope and practice of an EMT-I may be creditable, but only with the approval of the Department. If in doubt, the EMT-I should contact the Department. Up to 10 hours are creditable during a certification period for college courses.

(i) Up to 16 hours of CPR training are creditable during a certification period.

(j) Computer and internet-based training that illustrates, drills, provides interactive use, or demonstrates proper emergency care procedures. The training must be approved by the CECBEMS or the Department. Up to 25 hours are creditable during a certification period using computer and internet-based training.

(k) Completing tests related to the EMT-I scope of practice in EMS-related journals or publications. Up to five hours are creditable during a certification period for completing tests from journals and publications.

(7) The EMT-I must complete the following skills at least two times as part of the CME training listed in subsections (4) and (6):

(a) bandaging of the arm, elbow, shoulder, neck, top of head, cheek, protruding eye, ear, and open chest wound;

(b) splinting using hare traction or sager splint (choice based upon availability of equipment);

(c) splinting of at least one upper and lower extremity;

(d) cervical and spinal immobilization using c-collar, long board, head stabilization equipment (utilize available equipment) and straps;

(e) patient assisted medications: nitroglycerin, pre-loaded epinephrine, inhaler, glucose, activated charcoal, and aspirin;

(f) pediatric immobilization: in a car seat and backboard;

(g) insertion of nasopharyngeal and oropharyngeal airways; and

(h) defibrillation of a simulated patient in cardiac arrest using an AED.

(8) An EMT-I who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMT-I's completion of the recertification requirements. An EMT-I who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(9) Each EMT-I is individually responsible to complete and submit the required recertification material to the Department. Each EMT-I should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMT-I's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(10) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMT-I; however, the EMT-I remains responsible for a timely and complete submission.

(11) The Department may shorten recertification periods. An EMT-I whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(12) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expires. If this happens, the individual shall recertify following Utah Code 39-1-64.

R426-12-304. EMT-I Lapsed Certification.

(1) An individual whose EMT-I certification has expired for less than one year, may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become certified. The individual's new expiration date will be four years from the individual's old expiration date.

(2) An individual whose certification has expired for more than one year must take the EMT-B and EMT-I courses and reapply for initial certification.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMT-I until the individual completes the recertification process.

R426-12-305. EMT-I Testing Failures.

(1) An individual who fails any part of the EMT-I certification or recertification written or practical examination may retake the EMT-I examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete EMT-I training course to be eligible for further examination.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

(4) If an EMT-I fails the recertification written or practical tests three times, he may request in writing, within 30 days of the date of the third failure notification letter, that he be allowed

to apply for EMT-Basic recertification. If he applies for EMT-Basic recertification in this circumstance, he has three opportunities to test to that level. He has 120 days from the date of his request to complete recertification requirements at the EMT-Basic level.

R426-12-400. Emergency Medical Technician-Intermediate Advanced (EMT-IA) Requirements and Scope of Practice.

(1) The Department may certify as an EMT-IA, an EMT-B or an EMT-I who:

(a) meets the initial certification requirements in R426-12-401; and

(b) has 12 months of field experience as a certified EMT-B or EMT-I, six months of which the Department may waive upon a written request from the off-line medical director showing that there is a shortage of EMT-IAs to serve the area.

(2) The Committee adopts as the standard for EMT-IA training and competency in the state the following affective, cognitive, and psychomotor objectives for patient care and treatment from the 1998 United States Department of Transportation's "Emergency Medical Technician-Intermediate Training Program: National Standard Curriculum" (EMT-I Curriculum) which is incorporated by reference, with the exception of the following objectives: 1-1.18-24,1-1.54,2-1.8, 2-1.31(f), 2-1.33, 2-1.75(c), (e), and (f), 6-3.1, 6-3.102-106.

(3) In addition to the skills that an EMT-B and an EMT-I may perform, an EMT-IA may perform the adopted skills described in section R426-12-400(2).

R426-12-401. EMT-IA Initial Certification.

(1) The Department may certify an EMT-IA for a four-year period.

(2) An individual who wishes to become certified as an EMT-IA must:

(a) successfully complete a Department-approved EMT-IA course as described in R426-12-400(2);

(b) be able to perform the functions listed in the objectives of the EMT-I Curriculum adopted in R426-12-400(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-IA certification;

(d) be currently certified as an EMT-B or EMT-I;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit verification of completion of a Department-approved course in adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(h) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year; and

(i) within 120 days after the official course end, the applicant must, successfully complete the Department written and practical EMT-IA examinations, or reexaminations, if necessary;

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(4) If an individual's basic EMT or intermediate EMT certification lapses before he has completed all course requirements for an EMT-IA, the individual must recertify at his current certification level, including a practical test and CME documentation, before he can certify as an EMT-IA. The individual may take the EMT-IA written certification test to satisfy the written EMT-Basic or EMT-Intermediate recertification and EMT-IA written certification requirements.

R426-12-402. EMT-IA Reciprocity.

(1) The Department may certify as an EMT-IA an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical EMT-IA examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

R426-12-403. EMT-IA Recertification Requirements.

(1) The Department may recertify an EMT-IA for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination;

(e) successfully complete the Department applicable written and practical EMT-IA recertification examinations, or reexaminations, if necessary within one year prior to expiration;

(f) submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-IA skills:

(i) initiating and terminating intravenous infusion;

(ii) completion of pediatric vascular access skills station;

(iii) insertion and removal of intraosseous needle;
(iv) insertion and removal of endotracheal tube;
(v) administration of medications via intramuscular, subcutaneous, and intravenous routes; and
(vi) EKG rhythm recognition; and
(g) provide documentation of completion of 100 hours of Department-approved CME meeting the requirements of subsections (3), (4), (5), (6), (7) and (8).
(3) The EMT-IA must complete the CME throughout each of the prior four years.
(4) The EMT-IA must have taken at least 25 elective hours and the following 75 required CME hours by subject:
(a) Foundations of EMT-Intermediate - 4 hours;
(b) Pharmacology - 5;
(c) Venous Access and Medication Administration - 5 hours;
(d) Airway - 8 hours;
(e) Techniques of Physical Examination - 4 hours;
(f) Patient Assessment - 2 hours;
(g) Clinical Decision Making - 4 hours
(h) Trauma Systems and Mechanism of Injury - 3 hours;
(i) Hemorrhage and Shock - 4 hours;
(j) Burns - 3 hours;
(k) Thoracic Trauma - 3 hours;
(l) Respiratory - 2 hours;
(m) Cardiac - 6 hours;
(n) Diabetic - 2 hours;
(o) Allergic Reactions - 2 hours;
(p) Poisoning - 2 hours;
(q) Environmental Emergencies - 2 hours;
(r) Gynecology - 2 hours;
(s) Obstetrics - 2 hours;
(t) Neonatal resuscitation - 4 hours; and
(u) Pediatrics - 6 hours.
(5) The Department strongly suggests that the 25 elective hours be in the following topics:
(a) Anatomy and Physiology;
(b) Assessment Based Management;
(c) Behavioral Emergencies;
(d) Communication;
(e) Documentation;
(f) Geriatrics;
(g) HAZMAT;
(h) History Taking;
(i) Mass Casualty Incident;
(j) Medical Incident Command;
(k) Neurological Emergencies;
(l) Non-Traumatic Abdominal Emergencies; and
(m) Trauma Practical Lab.
(6) An EMT-IA may complete CME hours through the methodologies listed in this subsection. All CME must be related to the required skills and knowledge of an EMT-IA. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction. Limitations and special requirements are listed with each methodology.
(a) Workshops and seminars related to the required skills and knowledge of an EMT-IA and approved for CME credit by the Department or the CECBEMS.
(b) Local medical training meetings.
(c) Demonstration or practice sessions.
(d) Medical training meetings where a guest speaker presents material related to emergency medical care.
(e) Actual hours the EMT-IA is involved in community emergency exercise and disaster drills. Up to 20 hours are creditable during a recertification period for participation in exercises and drills.
(f) Teaching the general public (schools, scouts, clubs, or church groups) on any topic within the scope of the EMT-IA practice. Up to 15 hours are creditable during a certification period for teaching classes.
(g) Viewing audiovisuals (films, videotapes, etc.) which illustrate and review proper emergency care procedures. The EMT-IA must view the audiovisual material in the presence of a training officer. Up to 10 hours are creditable during a certification period using audiovisuals.
(h) Completing college courses in topics such as biology, chemistry, anatomy and physiology. Other college courses relating to the scope and practice of an EMT-IA may be creditable, but only with the approval of the Department. If in doubt, the EMT-IA should contact the Department. Up to 10 hours are creditable during a certification period for college courses.
(i) Up to 16 hours of CPR training are creditable during a certification period.
(j) Computer and internet-based training that illustrates, drills, provides interactive use, or demonstrates proper emergency care procedures. The training must be approved by the CECBEMS or the Department. Up to 25 hours are creditable during a certification period using computer and internet-based training.
(k) Completing tests related to the EMT-IA scope of practice in EMS-related journals or publications. Up to five hours are creditable during a certification period for completing tests from journals and publications.
(7) The EMT-IA must complete the following skills at least two times as part of the CME training listed in subsections (4) and (6):
(a) bandaging of the arm, elbow, shoulder, neck, top of head, cheek, protruding eye, ear, and open chest wound;
(b) splinting using hare traction or sager splint (choice based upon availability of equipment);
(c) splinting of at least one upper and lower extremity;
(d) cervical and spinal immobilization using c-collar, long board, head stabilization equipment (utilize available equipment) and straps;
(e) patient-assisted medications: nitroglycerin, pre-loaded epinephrine, inhaler, glucose, activated charcoal, and aspirin;
(f) pediatric immobilization: in a car seat and backboard;
(g) insertion of nasopharyngeal and oropharyngeal airways; and
(h) initiating and terminating intravenous infusion;
(i) completion of pediatric vascular access skills station;
(j) insertion and removal of intraosseous needle;
(k) insertion and removal of endotracheal tube;
(l) administration of medications via intramuscular, subcutaneous, and intravenous routes;
(m) transcutaneous pacing;
(n) synchronized cardioversion;
(o) insertion and removal of a nasal gastric tube;
(p) external jugular vein cannulation;
(q) needle decompression of a chest;
(r) administration of the following medications: adenosine, activated charcoal, aspirin, atropine, albuterol, D50, diazepam, epinephrine 1:1000, epinephrine 1:10,000, furosemide, lidocaine, morphine, naloxone, and nitroglycerin; and;
(s) EKG rhythm recognition of the following rhythms: ventricular fibrillation, ventricular tachycardia, atrial flutter, atrial fibrillation, sinus tachycardia, paroxysmal supraventricular tachycardia, pulseless electrical activity, asystole, premature ventricular contraction, atrioventricular blocks:1st degree, 2nd degree types I and II, and 3rd degree.
(8) An EMT-IA who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMT-IA's completion of the recertification requirements. An EMT-I who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(9) Each EMT-IA is individually responsible to complete and submit the required recertification material to the Department. Each EMT-IA should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMT-IA's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(10) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMT-IA; however, the EMT-IA remains responsible for a timely and complete submission.

(11) The Department may shorten recertification periods. An EMT-IA whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(12) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expires. If this happens, the individual shall recertify following Utah Code 39-1-64.

R426-12-404. EMT-IA Lapsed Certification.

(1) An individual whose EMT-IA certification has lapsed for less than one year, and who wishes to become recertified as an EMT-IA must complete all recertification requirements and pay a recertification late fee to become certified. The individual's new expiration date will be four years from the old expiration date.

(2) An individual whose EMT-IA certification has expired for more than one year, and who wishes to become recertified as a EMT-IA must:

(a) submit a completed application, including social security number and signature to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) submit to the Department evidence of having completed 100 hours of Department-approved continuing medical education within the prior four years following R426-12-403 EMT-IA Recertification Requirements;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination;

(e) submit verification of current completion of a Department-approved course in adult and pediatric advanced life support;

(f) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in EMT-IA skills;

(g) successfully complete the applicable Department written and practical examinations; and

(h) pay all applicable fees.

(3) The individual's new expiration date will be four years from the completion of all recertification materials.

(4) An Individual whose certification has lapsed is not authorized to provide care as an EMT-IA until the individual completes the recertification process.

R426-12-405. EMT-IA Testing Failures.

(1) An individual who fails any part of the EMT-IA written or practical certification or recertification examination may retake the EMT-IA examination twice without further course work.

(2) If the individual fails on both re-examinations, he must take a complete EMT-IA training course to be eligible for further examination at the EMT-IA level.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written tests administered after completion of the new course.

(4) If an EMT-IA fails the recertification written or practical test three times, he may request in writing, within 30 days of the date of the third failure notification letter, that he be allowed to apply for EMT-I or EMT-B recertification. He has 120 days from the date of his request to complete recertification requirements at a lower level.

R426-12-500. Paramedic Requirements and Scope of Practice.

(1) The Department may certify as a paramedic, an EMT-B, an EMT-I or an EMT-IA who:

(a) meets the initial certification requirements in R426-12-501; and

(b) has 12 months of field experience as a certified EMT-B, EMT-I or EMT-IA, six months of which the Department may waive upon a written request from the off-line medical director showing that there is a shortage of paramedics to serve the area;

(2) The Committee adopts as the standard for paramedic training and competency in the state the following affective, cognitive and psychomotor objectives for patient care and treatment from the 1998 United States Department of Transportation's "EMT-Paramedic Training Program: National Standard Curriculum" (Paramedic Curriculum) which is incorporated by reference.

(3) In addition to the skills that an EMT-B, an EMT-I and an EMT-IA may perform, a Paramedic may perform the adopted skills described in section R426-12-500(2).

R426-12-501. Paramedic Initial Certification.

(1) The Department may certify a paramedic for a four year period.

(2) An individual who wishes to become certified must:

(a) successfully complete a Department-approved Paramedic course as described in R426-12-500(2);

(b) be able to perform the functions listed in the objectives of the Paramedic Curriculum adopted in R426-12-500(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for paramedic certification;

(d) be currently certified as an EMT-B, EMT-I, or EMT-IA;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit verification of completion of a Department-approved course in adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(h) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year; and

(i) within 120 days after the official end date, the applicant must, successfully complete the Department written and practical paramedic examinations, or reexaminations, if

necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(4) If an individuals EMT-B, EMT-I, or EMT-IA certification lapses before he has completed all course requirements for a paramedic, the individual must recertify at his current certification level, including a practical test and CME documentation, before he can be certified as a paramedic. The individual may take the paramedic written test to satisfy the written EMT-Basic, EMT-Intermediate, or EMT-Intermediate Advanced recertification and paramedic written certification requirements.

R426-12-502. Paramedic Reciprocity.

(1) The Department may certify as a Paramedic an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical Paramedic examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

R426-12-503. Paramedic Recertification Requirements.

(1) The Department may recertify a paramedic for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in Adult and Pediatric Advanced Cardiac Life Support;

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination;

(e) successfully complete the applicable Department paramedic recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(g) submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following paramedic skills; and

(h) provide documentation of completion of 100 hours of Department-approved CME meeting the requirements of subsections (3), (4), (5), (6), (7), and (8).

(3) The Paramedic must complete the CME throughout each of the prior four years.

(4) The Paramedic must take at least 20 elective hours and the following 80 required CME hours by subject:

(a) EMS system roles and responsibilities - 2 hours;
(b) Well being of the paramedic - 2 hours;
(c) Pathophysiology - 1 hour;
(d) Medical legal - 1 hour;
(e) Pharmacology - 1 hour;
(f) Venous access and medication administration - 1 hour;
(g) Airway management and ventilation - 5 hours;
(h) Patient assessment - 3 hours;
(i) Communication - 1 hour;
(j) Documentation - 1 hour;
(k) Trauma Systems and Mechanism of injury - 1 hour;
(l) Hemorrhage and shock - 2 hours;
(m) Burns - 3 hours;
(n) Head and facial - 3 hours;
(o) Spinal trauma - 1 hour;
(p) Thoracic trauma - 2 hours;
(q) Abdominal trauma - 2 hours;
(r) Pulmonary - 1 hour;
(s) Cardiology - 9 hours;
(t) Neurology - 4 hours;
(u) Endocrinology - 3 hours;
(v) Allergies and anaphylaxis - 1 hour;
(w) Gastroenterology - 4 hours;
(x) Toxicology - 2 hours;
(y) Environmental emergencies - 4 hours;
(z) Infectious and communicable diseases - 3 hours;
(aa) Behavioral/psychiatric disorders - 1 hour;
(bb) Obstetrics and gynecology - 2 hours;
(cc) Neonatology - 3 hours;
(dd) Pediatrics - 5 hours;
(ee) Geriatrics - 2 hours;
(ff) Assessment based management - 1 hour;
(gg) Medical incident command - 2 hours; and
(hh) Hazardous materials incidents - 1 hour;

(5) The Department strongly suggests that the 20 elective hours be in the following topics:

(a) Ethics, Illness and injury prevention;
(b) Therapeutic communications;
(c) Life span development;
(d) Clinical decision making;
(e) Soft tissue trauma;
(f) Renal/urology;
(g) Hematology;
(h) Abuse and assault;
(i) Patients with special challenges;
(j) Acute intervention for chronic care patients;
(k) Ambulance operations;
(l) Rescue awareness and operations; and
(m) Crime scene awareness.

(6) A Paramedic may complete CME hours through the methodologies listed in this subsection. All CME must be related to the required skills and knowledge of a paramedic. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction. Limitations and special requirements are listed with each methodology.

(a) Workshops and seminars related to the required skills and knowledge of a paramedic and approved for CME credit by

the Department or the CECBEMS.

(b) Local medical training meetings.

(c) Demonstration or practice sessions.

(d) Medical training meetings where a guest speaker presents material related to emergency medical care.

(e) Actual hours the Paramedic is involved in community emergency exercise and disaster drills. Up to 20 hours are creditable during a recertification period for participation in exercises and drills.

(f) Teaching the general public (schools, scouts, clubs, or church groups) on any topic within the scope of the Paramedic practice. Up to 15 hours are creditable during a certification period for teaching classes.

(g) Viewing audiovisuals (films, videotapes, etc.) which illustrate and review proper emergency care procedures. The Paramedic must view the audiovisual material in the presence of a training officer. Up to 10 hours are creditable during a certification period using audiovisuals.

(h) Completing college courses in topics such as biology, chemistry, anatomy and physiology. Other college courses relating to the scope and practice of a paramedic may be creditable, but only with the approval of the Department. If in doubt, the Paramedic should contact the Department. Up to 10 hours are creditable during a certification period for college courses.

(i) Up to 16 hours of CPR training are creditable during a certification period.

(j) Computer and internet-based training that illustrates, drills, provides interactive use, or demonstrates proper emergency care procedures. The training must be approved by the Continuing Education Coordinating Board of Emergency Medical Services or the Department. Up to 25 hours are creditable during a certification period using computer and internet-based training.

(k) Completing tests related to the Paramedic scope of practice in EMS-related journals or publications. Up to five hours are creditable during a certification period for completing tests from journals and publications.

(7) A Paramedic who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the Paramedic's completion of the recertification requirements. A Paramedic who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(8) Each Paramedic is individually responsible to complete and submit the required recertification material to the Department. Each Paramedic should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the Paramedic's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(9) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of a Paramedic; however, the Paramedic remains responsible for a timely and complete submission.

(10) The Department may shorten recertification periods. A paramedic whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(11) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expires. If this happens, the individual shall recertify following Utah Code 39-1-64.

R426-12-504. Paramedic Lapsed Certification.

(1) An individual whose paramedic certification has lapsed for less than one year, and who wishes to become recertified as a paramedic must complete all recertification requirements and pay a recertification late fee.

(2) An individual whose paramedic certification has expired for more than one year, and who wishes to become recertified as a paramedic must:

(a) submit a completed application, including social security number and signature to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) submit to the Department evidence of having completed 100 hours of Department-approved continuing medical education within the prior four years, following R426-12-503 Paramedic Recertification Requirements;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination;

(e) submit verification of current completion of a Department-approved course in adult and pediatric advanced life support;

(f) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in paramedic skills;

(g) successfully complete the applicable Department written and practical examinations; and

(h) pay all applicable fees.

(3) The individuals new expiration date will be four years from the completion of all recertification materials.

(4) An individual whose certification has lapsed is not authorized to provide care as a paramedic until the individual completes the recertification process.

R426-12-505. Paramedic Testing Failures.

(1) An individual who fails any part of the paramedic certification or recertification written or practical examination may retake the Paramedic examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete Paramedic course to be eligible for further examination at the paramedic level.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

(4) If a paramedic fails the recertification written or practical tests three times, he may request in writing, within 30 days of the date of the third failure notification letter, that he be allowed to apply for EMT-IA, EMT-I, or EMT-B certification. He has 120 days to complete recertification requirements at a lower level.

R426-12-600. Emergency Medical Dispatcher (EMD) Requirements and Scope of Practice.

(1) The Department may certify as an EMD an individual who meets the initial certification requirements in R426-12-601.

(2) The Committee adopts the 1995 United States Department of Transportation's "EMD Training Program: National Standard Curriculum" (EMD Curriculum) as the standard for EMD training and competency in the state, which is incorporated by reference.

(3) An EMD may perform the job functions as described in the EMD curriculum, as adopted in this section.

R426-12-601. EMD Initial Certification.

(1) The Department may certify an EMD for a four year

period.

(2) An individual who wishes to become certified as an EMD must:

(a) successfully complete a Department-approved EMD course as described in R426-12-600(2);

(b) be able to perform the functions listed in the objectives of the EMD Curriculum adopted in R426-12-600(2)as verified by personal attestation and successful accomplishment during the course of all cognitive, affective and psychomotor skills and objectives listed in the EMD Curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence and successful completion of all training requirements for EMD certification;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years; and;

(g) maintain and submit documentation of having completed within the prior two years a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater; and

(h) within 120 days after the official course end date, the applicant must successfully complete the Department written and practical EMD examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

R426-12-602. EMD Reciprocity.

(1) The Department may certify as an EMD an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years, a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(d) successfully complete the Department written and practical EMD examination, or re-examinations, if necessary;

(e) submit a current certification from one of the states of the United States or its possessions; and

(f) provide documentation of completion of 12 hours of continuing medical education within the prior year.

(3) The Department may certify as an EMD an individual certified by the National Academy of Emergency Medical Dispatch (NAEMD). An individual seeking reciprocity for certification in Utah based on NAEMD certification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within one year of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years:

(i) a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater; and

(ii)a minimum of a two-hour course in critical incident stress management (CISM);

(d) submit documentation of current NAEMD certification.

R426-12-603. EMD Recertification.

(1) The Department may recertify an EMD for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater;

(d) successfully complete the applicable Department recertification examinations, or reexaminations if necessary, within one year prior to expiration of the certification to be renewed; and

(e) provide documentation of completion of 48 hours of Department-approved CME meeting the requirements of subsections (3), (4), and (5).

(3) The EMD must complete the CME throughout each of the prior four years.

(4) The EMD must take at least eight elective hours and the following 40 required CME hours by subject:

(a) Roles and Responsibilities - 5 hours;

(b) Obtaining Information from callers - 7 hours;

(c) Resource allocation - 4 hours;

(d) Providing emergency care instruction - 2 hours;

(e) Legal and Liability Issues - 5 hours;

(f) Critical Incident Stress Management - 5 hours;

(g) Basic Emergency Medical Concepts - 5 hours; and

(h) Chief complaint types - 7 hours.

(5) An EMD may complete CME hours through the methodologies listed in this subsection. All CME must be related to the required skills and knowledge of an EMD. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction. Limitations and special requirements are listed with each methodology.

(a) Workshops and seminars related to the required skills and knowledge of an EMD and approved for CME credit by the Department or the CECBEMS.

(b) Local medical training meetings.

(c) Demonstration or practice sessions.

(d) Medical training meetings where a guest speaker presents material related to emergency medical care.

(e) Actual hours the EMD is involved in community emergency exercise and disaster drills. Up to eight hours are creditable during a recertification period for participation in exercises and drills.

(f) Teaching the general public (schools, scouts, clubs, or church groups) on any topic within the scope of the EMD practice.

(g) Viewing audiovisuals (films, videotapes, etc.) which illustrate and review proper emergency care procedures. The EMD must view the audiovisual material in the presence of a training officer. Up to 10 hours are creditable during a certification period using audiovisuals.

(h) Completing college courses relating to the scope and practice of an EMD may be creditable, but only with the approval of the Department. Up to eight hours are creditable during a certification period for college courses.

(i) Telephone scenarios of practical training and role playing.

(j) Riding with paramedic or ambulance units to understand the EMS system as a whole. Up to six hours are creditable during a certification period for ride-alongs.

(k) Computer and internet-based training that illustrates, drills, provides interactive use, or demonstrates proper emergency care procedures. The training must be approved by the Continuing Education Coordinating Board of Emergency Medical Services or the Department. Up to 12 hours are creditable during a certification period using computer and internet-based training.

(6) Notwithstanding the provisions of subsections (2), (3), (4), and (5), an EMD who has been certified or recertified by the National Academy of Emergency Medical Dispatch (NAEMD) may be recertified by the Department upon the following conditions:

(a) the EMD must, as part of meeting the EMD's continuing medical education requirements, take a minimum of a two-hour course in critical incident stress management (CISM);

(b) an individual who takes a NAEMD course offered in Utah must successfully pass a class that follows the CISM section of the Department-established EMD curriculum; and

(c) the individual must:

(i) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(ii) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(iii) maintain and submit documentation of having completed within the prior two years a CPR course offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent or greater; and

(iv) submit documentation of current NAEMD certification.

(7) An individual who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMD's completion of the recertification requirements. An EMD who is not affiliated with an EMS agency must submit verification of all recertification requirements directly to the Department.

(8) Each EMD is individually responsible to complete and submit the required recertification material to the Department. Each EMD should submit all recertification materials to the Department at one time and no later than 30 days and no earlier than one year prior to the EMD's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(9) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMD; however, the EMD remains responsible for a timely and complete submission.

(10) The Department may shorten recertification periods. An EMD whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(11) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

R426-12-604. EMD Lapsed Certification.

(1) An individual whose EMD certification has expired for less than one year may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become recertified.

(2) An individual whose certification has expired for more than one year must take an EMD course and reapply for initial certification.

(3) The individuals new expiration date will be four years from the old expiration date.

(4) An individual whose certification has lapsed, is not authorized to provide dispatch services until he has completed the recertification process.

R426-12-605. EMD Testing Failures.

(1) An individual who fails any part of the EMD certification or recertification written or practical examination may retake the EMD examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete EMD training course to be eligible for further examination at the EMD level.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written tests administered after completion of the new course.

R426-12-700. Emergency Medical Services Instructor Requirements.

(1) The Department may certify as an EMS Instructor an individual who:

(a) meets the initial certification requirements in R426-12-701; and

(b) is currently certified in Utah and has been certified as an EMT-B, EMT-I, EMT-IA, Paramedic, or Dispatcher for 12 months.

(2) The Committee adopts the 1995 United States Department of Transportation's "EMS Instructor Training Program: National Standard Curriculum" (EMS Instructor Curriculum) as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the certification level to which the instructor is certified. An EMS instructor who is only certified as an EMD may only teach EMD courses.

(4) An EMS instructor must abide by the terms of the "EMS Instructor Contract," teach according to the contract, and comply with the teaching standards and procedures in the EMS Instructor Manual or EMD Instructor Manual as incorporated into the respective "EMS Instructor Contract" or "EMD Instructor Contract."

(5) An EMS instructor must maintain the EMS certification for the level that the instructor is certified to teach.

If an individual's EMS certification lapses, the instructor certification is invalid until EMS certification is renewed.

(6) The Department may waive a particular instructor certification requirement if the applicant can demonstrate that the applicant's training and experience requirements are equivalent or greater to what are required in Utah.

R426-12-701. EMS Instructor Certification.

(1) The Department may certify an individual who is an EMT-B, EMT-I, EMT-IA, Paramedic, or EMD as an EMS Instructor for a two year period.

(2) An individual who wishes to become certified as an EMS Instructor must:

(a) submit an application and pay all applicable fees;

(b) submit three letters of recommendation regarding EMS skills and teaching abilities;

(c) submit documentation of 15 hours of teaching experience;

(d) successfully complete all required examinations;

(e) submit biennially a completed and signed "EMS Instructor Contract" to the Department agreeing to abide by the standards and procedures in the current EMS Instructor Manual or EMD Instructor Manual; and

(f) successfully complete the Department-sponsored initial EMS instructor training course.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMT-B, EMT-I, EMT-IA, or paramedic courses must also:

(a) provide documentation of 30 hours of patient care within the prior year; and

(b) submit verification that the individual is recognized as a CPR instructor by the National Safety Council, the American Red Cross, or the American Heart Association; and

(4) An individual who wishes to become certified as an EMS Instructor to teach EMD courses must also successfully complete the Department-sponsored initial EMS instructor training course.

(5) The Department may waive portions of the initial EMS instructor training courses for previously completed Department-approved instructor programs.

R426-12-702. EMS Instructor Recertification.

An EMS instructor who wishes to recertify as an instructor must:

(1) maintain current EMS certification;

(2) attend the required Department-approved recertification training;

(3) submit verification of 30 hours of EMS teaching experience in the prior two years;

(4) submit verification that the instructor is currently recognized as a CPR instructor by the National Safety Council, the American Red Cross, or the American Heart Association, if teaching an EMT-B, EMT-I, EMT-IA, or Paramedic course;

(5) submit an application and pay all applicable fees;

(6) successfully complete any Department-required examination; and

(7) submit biennially a completed and signed "EMS Instructor Contract" to the Department agreeing to abide by the standards and procedures in the current EMS Instructor Manual.

R426-12-703. EMS Instructor Lapsed Certification.

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements in R426-12-702.

(2) An EMS instructor whose instructor certification has expired for more than two years must complete all initial instructor certification requirements and reapply as if there were no prior certification.

R426-12-800. Emergency Medical Services Training Officer Requirements.

(1) The Department may certify as an EMS Training Officer an individual who:

(a) meets the initial certification requirements in R426-12-801; and

(b) is currently certified in Utah and has been certified as an EMT-B, EMT-I, EMT-IA, Paramedic, or Dispatcher for 12 months.

(2) An EMS training officer must abide by the terms of the Training Officer Contract, and comply with the standards and procedures in the Training Officer Manual as incorporated into the respective Training Officer Contract.

R426-12-801. EMS Training Officer Certification.

(1) The Department may certify an individual who is certified as an EMT-B, EMT-I, EMT-IA, Paramedic, or EMD as a training officer for a two year period.

(2) An individual who wishes to become certified as an EMS Training officer must:

(a) be currently certified as an EMS instructor;

(b) successfully complete the Department's course for new training officers;

(c) successfully complete any Department examinations;

(d) submit an application and pay all applicable fees; and

(e) submit biennually a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

(3) A training officer must maintain EMS instructor certification to retain training officer certification.

R426-12-802. EMS Training Officer Recertification.

A training officer who wishes to recertify as a training officer must:

(1) attend a training officer seminar every two years;

(2) maintain current EMS instructor and EMT-B, EMT-I, EMT-IA, Paramedic, or EMD certification;

(3) submit an application and pay all applicable fees;

(4) successfully complete any Department-examination requirements; and

(5) submit biennially a completed and signed new "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the current training officer manual.

R426-12-803. EMS Training Officer Lapsed Certification.

(1) An individual whose training officer certification has expired for less than one year may again become certified by completing the recertification requirements in R426-12-802. The individuals new expiration date will be two years from the old expiration date.

(2) An individual whose training officer certification has expired for more than one year must complete all initial training officer certification requirements and reapply as if there were no prior certification.

R426-12-900. Course Coordinator Certification.

(1) The Department may certify as a course coordinator an individual who:

(a) meets the initial certification requirements in R426-12-901; and

(b) has been certified in Utah as an EMS Instructor and as an EMT-B, EMT-I, EMT-IA, Paramedic or Dispatcher for 12 months.

(2) A Course Coordinator may only coordinate courses up to the certification level to which the course coordinator is certified. An course coordinator who is only certified as an EMD, may only coordinate EMD courses.

(3) A course coordinator must abide by the terms of the "Course Coordinator Contract" and comply with the standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

(4) A Course Coordinator must maintain an EMS Instructor certification and the EMS certification for the level that the course coordinator is certified to coordinate. If an individuals EMS certification lapses, the Course Coordinator certification is invalid until EMS certification is renewed.

R426-12-901. Course Coordinator Certification.

The Department may certify an individual who is an EMT-B, EMT-I, EMT-IA, Paramedic, or EMD as a course coordinator for a two year period. An individual who wishes to certify as a course coordinator must:

(1) be certified as an EMS instructor for one year;

(2) be an instructor of record for at least one Department-approved course;

(3) have taught a minimum of 15 hours in a Department-approved course;

(4) have co-coordinated one Department-approved course with a certified course coordinator;

(5) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;

(6) complete certification requirements prior to application to the Department's course for new course coordinators;

(7) submit an application and pay all applicable fees;

(8) complete the Department's course for new course coordinators;

(9) successfully complete all examination requirements;

(10) sign and submit annually the "Course Coordinator Contract" to the Department agreeing to abide to the standards and procedures in the then current Course Coordinator Manual; and

(11) maintain EMS instructor certification.

R426-12-902. Course Coordinator Recertification.

A course coordinator who wishes to recertify as a course coordinator must:

(1) maintain current EMS instructor and EMT-B, EMT-I, EMT-IA, Paramedic, or EMD certification;

(2) coordinate or co-coordinate at least one Department-approved course every two years;

(3) attend a course coordinator seminar every two years;

(4) submit an application and pay all applicable fees;

(5) successfully complete all examination requirements; and

(6) sign and submit biennually a Course Coordinator Contract to the Department agreeing to abide by the policies and procedures in the then current Course Coordinator Manual.

R426-12-903. Emergency Medical Services Course Coordinator Lapsed Certification.

(1) An individual whose course coordinator certification has expired for less than one year may again become certified by completing the recertification requirements in R426-12-802. The individuals new expiration date will be two years from the old expiration date.

(2) An individual whose course coordinator certification has expired for more than one year must complete all initial course coordinator certification requirements and reapply as if there were no prior certification.

R426-12-1000. Paramedic Training Institutions Standards Compliance.

(1) A person must be authorized by the Department to provide training leading to the certification of a paramedic.

(2) To become authorized and maintain authorization to provide paramedic training, a person must:

(a) enter into the Department's standard paramedic training contract; and

(b) adhere to the terms of the contract, including the requirement to provide training in compliance with the Course Coordinator Manual and the Utah Paramedic Training Program Accreditation Standards Manual.

R426-12-1100. Course Approvals.

A course coordinator offering EMS training to individuals who wish to become certified as an EMT-B, EMT-I, EMT-IA, Paramedic, or EMD, must obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(1) the applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(2) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(3) the Department finds that the course meets all the Department rules and contracts governing training;

(4) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(5) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

R426-12-1200. Off-line Medical Director Requirements.

(1) The Department may certify an off-line medical director for a four year period.

(2) An off-line medical director must be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required under "R426 Equipment, Drugs and Supplies List."

R426-12-1201. Off-line Medical Director Certification.

(1) An individual who wishes to certify as an off-line medical director must:

(a) have completed an American College of Emergency Physicians or National Association of Emergency Medical Services Physicians medical director training course or the Department's medical director training course within twelve months of becoming a medical director;

(b) submit an application and;

(c) pay all applicable fees.

(2) An individual who wishes to recertify as an off-line medical director must:

(a) retake the medical director training course every four years;

(b) submit an application; and

(c) pay all applicable fees.

R426-12-1300. Refusal, Suspension or Revocation of Certification.

(1) The Department shall exclude from EMS certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as an EMS personnel, including an FBI background investigation if not a Utah resident for the past consecutive five years;

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification from individuals convicted of any of the following crimes:

(i) sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

(ii) sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person;

(iii) abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility; and

(iv) crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree; or arson; or attempts to commit such crimes;

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole;

(ii) conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) crimes of violence against persons, such as assault;

(B) crimes defined as domestic violence under Section 77-36-1;

(C) crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(D) crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department may deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) the seriousness of the crime;

(ii) whether the crime relates directly to the skills of pre-hospital care service and the delivery of patient care;

(iii) the amount of time that has elapsed since the crime was committed;

(iv) whether the crime involved violence to or abuse of another person;

(v) whether the crime involved a minor or a person of diminished capacity as a victim;

(vi) whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust;

(vii) the total number of arrests and convictions; and

(viii) whether the applicant was truthful regarding the crime on his or her application.

(2) Certified EMS personnel must notify the Department of any arrest, charge, or conviction within 30 days of the arrest, charge or conviction.

(3) The Department may require EMS personnel to submit to a background examination or a drug test upon Department request.

(4) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification, or place a certification on probation, for any of the following causes:

(a) any of the reasons for exclusion listed in Subsection (1);

(b) a violation of Subsection (2);

(c) a refusal to submit to a background examination pursuant to Subsection (3);

(d) habitual or excessive use or addiction to narcotics or dangerous drugs;

(e) refusal to submit to a drug test administered by the individual's EMS provider organization or the Department;

(f) habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMS personnel or while driving any Department-permitted vehicle;

(g) failure to comply with the training, certification, or recertification requirements for the certification;

(h) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator;

(i) fraud or deceit in applying for or obtaining a certification;

(j) fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as a certified individual;

(k) unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or agency licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) conviction of a felony, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions;

(o) mental incompetence as determined by a court of competent jurisdiction;

(p) demonstrated inability and failure to perform adequate patient care;

(q) inability to provide emergency medical services with reasonable skill and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated; and

(r) misrepresentation of an individual's level of certification;

(s) failure to display a state-approved emblem with level of certification during an EMS response, and

(t) other or good cause, including conduct which is unethical, immoral, or dishonorable to the extent that the conduct reflects negatively on the EMS profession or might cause the public to lose confidence in the EMS system.

(5)(a) The Department may suspend an individual for a felony or misdemeanor arrest or charge pending the resolution of the charge if the nature of the charge is one that, if true, the Department could revoke the certification under subsection (1); and

(b) The Department may order EMS personnel not to practice when an active criminal or administrative investigation is being conducted.

R426-12-1400. Penalties.

As required by Subsection 63-46a-3(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
August 8, 2007 **26-8a-302**
Notice of Continuation September 20, 2004

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-3. General Child Care Facility Rules Inspection and Enforcement.
R430-3-1. Legal Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. It provides criteria to ensure that sanctions are applied consistently and appropriately.

R430-3-2. Informal Discussions.

Independent of any administrative proceeding, a licensee may request, within 30 days, to discuss a Department decision with Department staff.

R430-3-3. Definitions.

(1) "Deficiency" means a violation of any rule provision.
(2) "Department" means the Department of Health.
(3) "Facility" means the building and adjacent property, equipment, and supplies devoted to the child care operation.
(4) "High Risk for Harm" means there is the potential for serious injury to a child.
(5) "Inspection" means observation, measurement, review of documentation, and interview to determine compliance with rules.
(6) "Investigation" means an in-depth inspection of specific alleged rule violations.
(7) "Licensee" means the legally responsible person, people, program, or agency that hold a valid Department of Health issued child care license.
(8) "Statement of Findings" means a statement of one or more specific rule violations which, if not corrected, will prompt the Department to take disciplinary action.
(9) "Technical Assistance" means the noting of a rule violation and providing information on how to come into compliance.

R430-3-4. Compliance Assurance.

(1) The Department shall conduct an announced and unannounced inspection of each licensed facility to:
(a) determine compliance with rules;
(b) verify compliance with conditions placed on a license in a conditional status; and
(c) verify compliance with variance conditions.
(2) If allegations of rule violations are reported to the Department, the Department shall conduct a complaint investigation.
(a) The Department shall not investigate complaints from an anonymous source.
(b) The Department shall inform complainants that they are guilty of a class B misdemeanor if they are giving false information to the Department with the purpose of inducing a change in a licensing status.

R430-3-5. Technical Assistance.

If the Department finds a deficiency that does not pose a high risk for harm:
(1) the Department shall offer technical assistance; and
(2) the licensee shall provide a date by which correction must be made.
(a) The correction date shall not exceed 30 days from the date of the inspection.
(b) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

R430-3-6. Statement of Findings.

(1) If a licensee does not correct a deficiency by the correction date provided in R430-3-5(2), the Department shall issue a statement of findings that includes:
(a) a citation to the violated rule;
(b) a description of the violation with the facts which constitute the violation; and
(c) the date by which correction must be made.
(i) The correction date shall not exceed 30 days from the date of the subsequent inspection.
(ii) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.
(2) If a licensee violates a rule for which the licensee previously received technical assistance, the Department shall issue a statement of findings that includes:
(a) a citation to the violated rule;
(b) a description of the violation with the facts which constitute the violation; and
(c) the date by which the correction must be made.
(i) The correction date shall not exceed 30 days from the date of the inspection.
(ii) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.
(3) If a licensee violates a rule that creates a high risk for harm, the Department shall issue a statement of findings that includes:
(a) a citation to the violated rule;
(b) a description of the violation with the facts which constitute the violation; and
(c) the date by which the correction must be made which shall not exceed 30 days from the date of the inspection.

R430-3-7. Directed Plan of Correction.

The Department may issue a directed plan of correction that specifies how and when cited findings will be corrected if a licensee:
(1) fails to comply by the correction date specified in R430-3-6; or
(2) violates the same rule provision more than three times within any 12-month period.

R430-3-8. Conditional Status.

(1) The Department may place a license on a conditional status to assist the licensee to comply with rules if the licensee:
(a) fails to comply with rules by correction date specified in R430-3-6;
(b) violates the same rule provision more than three times within any 12-month period; or
(c) violates multiple rule provisions.
(2) The Department shall establish the length of the conditional status.
(3) The Department shall set the conditions that the licensee must satisfy to remove the conditional status.
(4) The Department shall return the license to a standard status when the licensee meets the conditions of the conditional status.

R430-3-9. Revocation.

(1) The Department may revoke a license if the licensee:
(a) fails to meet the conditions of a conditional status;
(b) violates the Child Care Licensing Act;
(c) provides false or misleading information to the Department;
(d) refuses to submit or make available to the Department any written documentation required to do an inspection or investigation;
(e) refuses to allow authorized representatives of the Department access to a facility to ascertain compliance to rules;

(f) fails to provide, maintain, equip, and keep the facility in a safe and sanitary condition; or

(g) has committed acts that would exclude a person from being licensed or certified under R430-6.

(2) The Department may set the effective date of the revocation such that parents are given 10 business days to find other care for children.

R430-3-10. Immediate Closure.

The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and which require immediate action to protect their health or safety.

R430-3-11. Death or Serious Injury of a Child in Care.

The Department may order a provider to restrict or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending the review of the Child Fatality Review Committee or receipt of a medical report determining the probable cause of death or injury.

R430-3-12. Operating without a License.

If a person is providing care in lieu of care ordinarily provided by parents for more than four unrelated children without the appropriate license or certificate, the Department may:

(1) issue a cease and desist order; or

(2) allow the person to continue operation if:

(a) the person was unaware of the need for a license or certificate;

(b) conditions do not create a clear and present danger to children in care; and

(c) the person agrees to apply for the appropriate license or certificate within 30 calendar days of notification by the Department.

R430-3-13. Deemed Status.

The Department may grant deemed status to facilities accredited by the National Academy of Early Childhood Programs or National Accreditation Commission for Early Care and Education Programs, National Association for Family Child Care or National Early Childhood Program Accreditation or the National After School Association in lieu of the licensing inspection by the Department upon completion of the following:

(1) As part of the license renewal process, the licensee must indicate on the license application its desire to initiate or continue deemed status.

(2) This request constitutes written authorization for the Department to attend the provider's exit conference with the accrediting agency.

(3) Upon receipt from the accrediting agency, the licensee shall submit copies of the following:

(a) accreditation certificate;

(b) survey reports and recommendations; and

(c) progress reports of all corrective actions underway or completed in response to the accrediting body's action or Department recommendations.

(4) The Department may exercise its regulatory responsibility and authority regardless of the facility's deemed status.

R430-3-14. Variances.

(1) If a licensee or applicant cannot comply with a rule but can meet the intent of the rule in another way, he may apply for a variance to that rule. The Department cannot issue a variance to the background screening requirements of Section 26-39-107 and R430-6.

(2) A licensee or applicant requesting a variance shall submit a completed variance request form to the Department. The requests must include:

(a) the name and address of the facility;

(b) the rule from which the variance is being sought;

(c) the time period for which the variance is being sought;

(d) a detailed explanation of why the rule cannot be met;

(e) the alternative means for meeting the intent of the rule;

(f) how the health and safety of the children will be ensured; and

(g) other justification that the licensee or applicant desires to submit.

(3) The Department may require additional information before acting on the request.

(4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.

(5) If the Department approves the request, the licensee shall keep a copy of the approved variance on file in the facility and make it publicly available.

(6) The Department may grant variances for up to 12 months.

(7) The Department may impose health and safety conditions upon granting a variance.

(8) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the varied rule by the documented alternative means;

(b) the facility fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the justification for the variance.

R430-3-15. Statutory Penalties.

(1) A violation of any rule is punishable by administrative civil money penalty of up to $5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to $5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

(2) The Department may impose an administrative civil money penalty of up to $100 per day to a maximum of $10,000 for unlicensed or uncertified child care.

(3) The Department may impose an administrative civil money penalty of up to $100 per day to a maximum of $10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.

(4) Any person intentionally making false statements or reports to the Department may be fined $100 for each violation to a maximum of $10,000.

(5) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.

(6) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

(7) Within 10 working days after receipt of a negative licensing action or imposition of a fine, each child care program must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the negative licensing action.

KEY: child care facilities
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R430. Health, Health Systems Improvement, Child Care Licensing.
R430-6. Background Screening.
R430-6-1. Authority.

(1) The Utah Code, Section 26-39-107, requires that a Bureau of Criminal Identification (BCI) screening be conducted on each person requesting a license or residential certificate or to renew a license or certificate for existing, new, and proposed owners, directors, members of the governing body, employees, providers of care and volunteers, except parents of children enrolled in the child care program.

(2) Utah Code, Section 26-39-104, requires the Department to make and enforce rules to protect children's common needs for a safe and healthy environment and provide for competent care givers. The Department shall review the licensing information system for licensing and certification purposes pursuant to Section 62A-4a-116.2 to screen for individuals who may have a supported finding of severe abuse and neglect by the Department of Human Services or substantiated finding by a Juvenile court under Subsection 78-3a-320.

R430-6-2. Purpose.

The purpose of the screening process using the BCI criminal background and child and adult licensing information system is to protect children receiving services in a child care program. The criminal background screening process determines whether a covered individual has been convicted of any crime. In addition, the Department screens all individuals using the licensing information system and court records under Subsection 78-3a-320(4) which is limited to:

(1) supported findings of severe abuse or neglect;

(2) an adjudication of severe child abuse or neglect by a court of competent jurisdiction; and

(3) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person.

R430-6-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Convicted" includes a conviction by a jury or court, a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, a plea in abeyance, and a plea of guilty or nolo contendere.

(2) "Covered Individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program; and

(g) all adults residing in a residence where child care is provided.

(3) "Department" means the Utah Department of Health.

(4) "Direct supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

(5) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(d) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

(6) "Unsupervised Contact" means contact with children that provides the unsupervised person opportunity and probability for personal communication or touch when not under the direct supervision of a child care provider or employee.

(7) "Volunteer" means an individual who is not directly compensated for providing care whose duties assigned by a child care provider or employee include unsupervised contact in a child care facility with children or food consumed by children on a regularly scheduled basis of one or more times per month.

R430-6-4. Exclusions from Criminal Background Screening, Emergency Care Providers.

In an emergency, not anticipated in the provider's emergency plan, a provider may assign a person who has not had a criminal background screening to care for and have unsupervised contact with children.

(1) That person shall make a signed, written declaration to the provider that the person has not been convicted of a felony or misdemeanor and has not been investigated with a supported finding from the Department of Human Services.

(2) During the term of the emergency, that person may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(3) The provider shall make reasonable efforts to minimize the time that this person has unsupervised contact with children.

R430-6-5. Criminal Background Screening through the Utah Division of Criminal Investigation and National Criminal History Records.

(1) Each child care provider requesting a residential certificate or license or to renew a license or residential certificate to provide child care shall submit to the Department the name and other identifying information on all covered individuals involved with the child care facility at the time the application is filed. A fingerprint card, waiver and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under (4) below.

(2) The request for a certificate or a license submitted by the provider shall require the provider to state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a consent to a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, the Department shall obtain information from the provider to assess the threat to children consistent with R430-6-6.

(3) After a license or certificate is issued or renewed, within five days of a new covered individual becoming involved with a child care facility, the child care facility licensee or certificate holder must submit the identifying information. A fingerprint card, waiver and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under (4) below.

(4) Fingerprint cards are not required if the Department is reasonably satisfied that:

(a) the covered individual has resided in Utah for the last five years;

(b) the covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time; or

(c) as of May 3, 1999, the covered individual was involved with a child care facility in a covered individual capacity and has resided in Utah continuously since that time.

(5) If a covered individual has resided in Utah for the last five years, except for religious or military service out-of-state, the covered individual shall submit to the Department a letter from their clergy or commanding officer documenting that the covered individual was not convicted of any felony or misdemeanor during the time period of the religious or military service. The covered individual shall then be deemed to have resided in Utah for the last five years and not be required to submit fingerprint cards.

(6) The Department shall perform a criminal background screening, which includes a review of the BCI database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee were submitted; the Department shall forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(7) If the BCI portion of the criminal background screening indicates that the covered individual has a conviction for a felony or misdemeanor, regardless of any exception under (4) above, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department.

(8) The Department shall review any criminal convictions, consistent with R430-6-6, to determine if action should be taken to protect the health and safety of children receiving child care in the facility.

(9) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a written decision to the child care provider and the covered individual explaining the action and the right of appeal.

R430-6-6. Exclusion from Child Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-39-107(2), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate and refuse to permit child care in the home.

(2) As allowed by Utah Code Ann. Subsection 26-39-107(3)(a), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) Only the Executive Director may consider and approve individual cases where a covered individual with a misdemeanor conviction will be allowed to provide child care, that would otherwise be excluded by this rule. This authority may not be delegated.

(4) The covered individual shall supply at a minimum the following in support of the request for action by the Executive Director.

(a) three sworn and notarized witness letters of personal reference attesting to the rehabilitation; and

(b) a copy of the police report and the court report.

(5) The Department shall rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny a license, certificate and employment based on that evidence.

(6) If the covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(7) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours.

R430-6-7. Licensing Information System.

(1) Pursuant to Utah Code Subsection 26-39-104(1)(a)(ii) the Department shall screen all covered individuals, including children residing in a home where child care is provided, for a history of supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the Department shall assess the threat to the safety and health of children. The Department may revoke any existing license or certificate and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached, and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.

(b) The Department may hold the license, certificate or employment denial in abeyance until DHS or the Juvenile court renders a decision, while the covered individual appeals the supported finding.

(3) If the Department denies or revokes a license, certificate or employment based upon the licensing information system, the Department shall send a written decision to the licensee and the covered individual.

(4) If the covered individual disagrees with the supported finding of severe abuse or neglect, any appeal must be directed to and follow the process established by Subsection 62A-4a-116.1. If the covered individual consents to the supported finding of severe abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the action taken by the Department, the covered individual may request a hearing with the Department.

(5) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department issues a license, certificate or grants employment; the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license or certificate.

R430-6-8. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-6(2), the Department shall act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend any license or certificate of a provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license, certificate or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a written decision to the licensee and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R430-6-9. Statutory Penalties.

(1) A violation of any rule is punishable by administrative civil money penalty of up to $5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to $5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

(2) The Department may impose an administrative civil money penalty of up to $100 per day to a maximum of $10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.

(3) Any person intentionally making false statements or reports to the Department may be fined $100 for each violation to a maximum of $10,000.

(4) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.

(5) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

KEY: child care facilities
February 6, 2006 **26-39**
Notice of Continuation August 13, 2007

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-30. Adjudicative Procedure.
R430-30-1. Purpose.

This rule is adopted pursuant to Title 26, Chapter 39.

R430-30-2. Definitions.

(1) "Department" means the Utah Department of Health, Bureau of Licensing.

(2) "Initial agency determination" means a decision by department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63-46b-1(2).

(3) "Notice of agency action" means the formal notice meeting the requirements of Subsection 63-46b-(3)2 that the department issues to commence an adjudicative proceeding.

(4) "Request for agency action" means the formal written request meeting the requirements of Subsection 63-46b-3(3) that requests the department to commence an adjudicative proceeding.

R430-30-3. Commencement of Adjudicative Proceedings.

(1) All adjudicative proceedings under Title 26, Chapter 39, Utah Child Care Licensing Act, and under R430, Child Care Licensing Rules, are formal adjudicative proceedings.

(2) The Department may commence an adjudicative proceeding by filing and serving a notice of agency action in accordance with Subsection 63-46b-3(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.

(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements for a request for agency action under Subsection 63-46b-3(3) by completing the "Facility Licensure Request for Agency Action" form and filing the form with the Department.

R430-30-4. Responses.

(1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.

(2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Subsection 63-46b-3(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.

(3) The written response shall:

(a) include the information specified in Subsection 63-46b-6(1);

(b) be signed by the respondent or the respondent's representative; and

(c) be filed with the Department during the time period specified in Subsection R430-30-4(1) or R430-30-4(2).

(4) The respondent shall send one copy of the response by certified mail to each party.

(5) A person who has filed a request for agency action and has received notice from the presiding officer under Subsection 63-46b-3(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.

(6) The presiding officer, upon motion of a party or upon the presiding officer's own motion, may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.

R430-30-5. Discovery.

(1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.

(2) The provisions of Rules 26, 27, 28, 29, 30, 32, 34, 36, and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.

(a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.

(b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.

(c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.

(d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.

(e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.

(f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.

(g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to Section R430-30-6.

R430-30-6. Witnesses and Subpoenas.

(1) Each party is responsible for the presence of that party's witnesses at the hearing.

(2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:

(a) the officer may issue the subpoena upon a party's motion supported by affidavit showing sufficient need, or upon the officer's own motion;

(b) the party to whom the hearing officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served.

(c) every subpoena shall be issued by the presiding officer under the seal of the Department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place therein specified.

(d) a supporting affidavit for a subpoena duces tecum for the production by a witness of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing shall include the following:

(i) the name and address of the entity upon whom the subpoena is to be served;

(ii) a description of what the party seeks to have the witness bring;

(iii) a showing of the materiality to the issue involved in the hearing;

(iv) a statement by the party that to the best of his knowledge the witness has such items in his possession or under his control.

R430-30-7. Certificate of Service.

There shall appear on all documents required to be served a certificate of service dated and signed by the party or his agent in substantially the following form:

I certify that I served the foregoing document upon all

parties to this proceeding by delivering (or mailing postage prepaid and properly addressed, or causing to be delivered) a copy of it to (provide the name of the person).

R430-30-8. Stays and Temporary Remedy.

(1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.

(2) The presiding officer shall issue a written decision within ten working days of the filing date of the request. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the children.

(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.

(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.

R430-30-9. Declaratory Orders.

Any person or agency may petition for a Department declaratory ruling on orders issued by the Department where there is statutory authority to issue orders by following the procedures outlined in Rule R380-5.

KEY: child care facilities
January 21, 1998 26-39
Notice of Continuation August 13, 2007

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-100. Child Care Centers.
R430-100-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of child care centers and requirements to protect the health and safety of children in child care centers.

R430-100-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, saliva, and breast milk.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(9) "Disinfect" means to eliminate most germs from inanimate surfaces through the use of chemicals registered with the U.S. Environmental Protection Agency as disinfectants in the manner described on the label, or through physical agents such as heat.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

(14) "Infant" means a child aged birth through 11 months of age.

(15) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(16) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(17) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies.

(18) "Parent" means the parent or legal guardian of a child in care.

(19) "Person" means an individual or a business entity.

(20) "Physical Abuse" means causing nonaccidental physical harm to a child.

(21) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(22) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(23) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidently or deliberately passing through the barrier.

(24) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(25) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(26) "School Age" means kindergarten and older age children.

(27) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(1)(2).

(28) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(29) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(30) "Toddler" means a child aged 12 months but less than 24 months.

(31) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

R430-100-3. License Required.

A person or persons must be licensed as a child care center under this rule if:

(1) they provide care in lieu of care ordinarily provided by a parent, for four or more hours per day;

(2) they provide care in a place other than the provider's home or the child's home;

(3) they provide care for five or more children;

(4) they provide care for each individual child for less than 24 hours per day;

(5) the program has a regularly scheduled, ongoing enrollment; and

(6) they provide care for direct or indirect compensation.

R430-100-4. Indoor Environment.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) There shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children.

(3) School age children shall have privacy when using the bathroom.

(4) For buildings constructed after 1 July 1997 there shall be a working hand washing sink in each classroom.

(5) Each area where infants or toddlers are cared for shall meet one of the following criteria:

(a) There shall be two working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and hand washing prior to food preparation, and the other sink shall be used exclusively for hand washing after diapering and non-food activities.

(b) There shall be one working sink in the room which is

used exclusively for hand washing, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.

(6) Infant and toddler areas shall not be used as access to other areas or rooms.

(7) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows, glass doors, and glass mirrors within 36 inches from the floor shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children;

(b) for the care of children; or

(c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R430-100-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and disinfect bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R430-100-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(5) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(7) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(8) The outdoor play area shall be free of trash, animal excrement, harmful plants, objects, or substances, and standing water.

(9) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers or rubber pants while in the pool; and

(c) the pool shall be emptied and disinfected after each use by a separate group of children.

(10) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.

(11) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(12) There shall be no trampolines in the outdoor play area.

(13) All outdoor play equipment and areas shall comply with the following safety standards by the dates specified in Table 4.

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(B) Use zones may overlap if two pieces of equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.

(C) The use zone in front of a slide may not overlap the use zone of any other piece of equipment.

(iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.

(iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment.

(v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment.

(viii) Swings shall have enclosed seats.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1
Depths of Protective Cushioning Required
for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface or Climbing Bar	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"
Over 6' up to 7'	12"	not allowed	9"	not allowed	6"
Over 7' up to 8'	12"	not allowed	12"	not allowed	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	12"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2
Depths of Protective Cushioning Required
for Shredded Wood Products

Highest Designated Play Surface or Climbing Bar	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	12"	9"	9"
Over 8' up to 9'	12"	9"	9"
Over 9' up to 10'	12"	9"	9"
Over 10' up to 11'	12"	12"	12"
Over 11'	12"	not allowed	not allowed

(g) If wood products are used as cushioning material:

(i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and

(ii) there shall be adequate drainage under the material.

(h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(i) Stationary play equipment that has a designated play surface less than the height specified in Table 3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 3
Heights of Designated Play Surfaces
That May Be Placed on Grass

INFANTS and TODDLERS	PRESCHOOLERS	SCHOOL AGE
Less than 18"	Less than 20"	Less than 30"

(j) On stationary play equipment used by infants and toddlers, protective barriers shall be provided on all play equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.

(k) On stationary play equipment used by preschoolers, protective barriers shall be provided on all play equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.

(l) On stationary play equipment used by school age children, protective barriers shall be provided on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(n) There shall be no protrusion or strangulation hazards in or adjacent to the use zone of any piece of stationary play equipment.

(o) There shall be no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(p) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of

any piece of stationary play equipment.

TABLE 4
Phase-in Schedule for Stationary Play Equipment Rules

By December 2007:
R430-100-6(13)(a)(viii)
R430-100-6(13)(d-h)

By December 2008:
R430-100-6(13)(i), unless equipment is installed in concrete or asphalt footings.
R430-100-6(13)(n)

By December 2009:
R430-100-6(13)(a)(i)
R430-100-6(13)(i), when equipment is installed in concrete or asphalt footings.

By December 2010:
R430-100-6(13)(j-l)
R430-100-6(13)(m)
R430-100-6(13)(o)

By December 2011:
R430-100-6(13)(a)(ii-vii) and R430-100-6(13)(c)
R430-100-6(13)(p)

(14) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R430-100-7. Personnel.

(1) The center must have a director who is at least 21 years of age and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of early childhood development courses;

(b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(d) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(e) Center directors who used only the National Administrator Credential (NAC) to meet the director qualifications prior to 1 July 2006 have until 30 June 2011 to obtain the required additional training in early childhood development.

(2) All caregivers shall be at least 18 years of age.

(3) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(4) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with children.

(5) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

(6) Whenever there are more than 8 children at the center, there shall be at least two caregivers present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. If there is only one caregiver present because there are 8 or fewer children at the center, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.

(7) Each new caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) job description and duties;

(b) the center's written policies and procedures;

(c) the center's emergency and disaster plan;

(d) child care licensing rules for:

(i) Supervision and Ratios. R430-100-11;

(ii) Injury Prevention. R430-100-12;

(iii) Parent Notification and Child Security. R430-100-13;

(iv) Child Health. 430-100-14;

(v) Child Nutrition. R430-100-15;

(vi) Infection Control. R430-100-16;

(vii) Medications. R430-100-17;

(viii) Napping. R430-100-18;

(ix) Child Discipline. R430-100-19;

(x) Activities. R430-100-20;

(xi) Transportation, R430-100-21, if the center provides transportation;

(xii) Animals, R430-100-22, if the center permits animals;

(xiii) Diapering, R430-100-23, if the center diapers children; and

(xiv) Infant and Toddler Care, R430-100-24, if the center cares for infants or toddlers.

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean up of body fluids;

(i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(k) If the center provides infant care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(8) The center director and all caregivers shall complete a minimum of 20 hours of training each year, based on the center's license date.

(a) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicense date.

(c) Annual training hours shall include the following topics:

(i) a review of all of the current child care licensing rules for:

(A) Supervision and Ratios. R430-100-11;

(B) Injury Prevention. R430-100-12;

(C) Parent Notification and Child Security. R430-100-13;

(D) Child Health. 430-100-14;

(E) Child Nutrition. R430-100-15;

(F) Infection Control. R430-100-16;

(G) Medications. R430-100-17;

(H) Napping. R430-100-18;
(I) Child Discipline. R430-100-19;
(J) Activities. R430-100-20;
(K) Transportation, R430-100-21, if the center provides transportation;
(L) Animals, R430-100-22, if the center permits animals;
(M) Diapering, R430-100-23, if the center diapers children; and
(N) Infant and Toddler Care, R430-100-24, if the center cares for infants or toddlers.
(ii) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;
(iii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
(iv) principles of child growth and development, including development of the brain; and
(v) positive guidance.
(d) If the center provides infant care, annual training topics for the center director and all infant and toddler caregivers shall also include:
(i) preventing shaken baby syndrome and coping with crying babies; and
(ii) preventing sudden infant death syndrome.
(9) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R430-100-8. Administration.
(1) The licensee is responsible for all aspects of the operation and management of the center.
(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.
(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.
(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.
(5) Either the center director or a designee with written authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.
(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.
(7) The center director shall be on-site at the center for at least 20 hours per week during operating hours in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.
(8) The center director must have sufficient freedom from other responsibilities to manage the center and respond to emergencies.
(9) There shall be a working telephone at the facility, and the center director shall inform a parent and the Department of any changes to the center's telephone number within 48 hours of the change.
(10) The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent. The provider shall also mail or fax a written report to the Department within five days of the incident.
(11) The duties and responsibilities of the center director include the following:
(a) appoint, in writing, one or more caregivers to be a director designee, with authority to act on behalf of the center director in his or her absence;
(b) train and supervise staff to:
(i) ensure their compliance with this rule;
(ii) ensure they meet the needs of the children in care as specified in this rule; and
(iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.
(12) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:
(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;
(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;
(c) procedures to account for each child's attendance and whereabouts;
(d) procedures to ensure that the center releases children to authorized individuals only;
(e) confidentiality and release of information;
(f) the use of movies and video or computer games, including what industry ratings the center allows;
(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;
(h) ensuring that food preparation and diapering handwashing are not done in the same sink in infant and toddler areas;
(i) discipline of children, including behavioral expectations of children and discipline methods used;
(j) transportation to and from off-site activities, or to and from home, if the center offers these services; and
(k) if the program offers transportation to or from school, policies addressing:
(i) how long children will be unattended before and after school;
(ii) what steps will be taken if children fail to meet the vehicle;
(iii) how and when parents will be notified of delays or problems with transportation to and from school; and
(iv) the use of size-appropriate safety restraints.
(13) The provider shall ensure that the written policies and procedures are available for review by parents, staff, and the Department during business hours.

R430-100-9. Records.
(1) The provider shall maintain the following records on-site for review by the Department:
(a) documentation of the previous 12 months of fire and disaster drills as specified in R430-10(11)(12)(13)(14);
(b) current animal vaccination records as required in R430-100-22(3);
(c) a six week record of child attendance, including sign-in and sign-out records;
(d) all current variances granted by the Department;
(e) a current local health department inspection;
(f) a current local fire department inspection;
(g) the most recent "Request for Annual Renewal of CBS/MIS Criminal History Information for Child Care";
(h) records for each currently enrolled child, including the following:
(i) an admission form containing the following information for each child:
(A) name;
(B) date of birth;
(C) date of enrollment;
(D) the parent's name, address, and phone number, including a daytime phone number;
(E) the names of people authorized by the parent to pick

up the child;

(F) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(G) the name, address, and phone number of an out of area/state emergency contact person for the child, if available; and

(H) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(ii) a current annual health assessment form as required in R430-100-14(5);

(iii) current immunization records or documentation of a legally valid exemption, as specified in R430-100-14(4);

(iv) a transportation permission form, if the center provides transportation services;

(v) a six week record of medication permission forms, and a six week record of medications actually administered; and

(vi) a six week record of incident, accident, and injury reports;

(vii) a six week record of eating, sleeping, and diaper changes as required in R430-100-23(12) R430-100-24(15); and

(i) records for each staff member, including the following:

(i) date of initial employment;

(ii) results of initial TB screening;

(iii) approved initial "CBS/MIS Consent and Release of Liability for Child Care" form;

(iv) the most recent "Disclosure Statement" for a criminal background check, if the employee has worked at the facility since the last license renewal;

(v) a six week record of days and hours worked;

(vi) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(vii) annual training documentation for caregivers; and

(viii) current first aid and CPR certification, if applicable as required in R430-100-10(2), R430-100-20(5)(d), and R430-100-21(2).

(2) The provider shall ensure that information in children's files is not released without written parental permission.

R430-100-10. Emergency Preparedness.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The center shall maintain at least one readily available first aid kit, and a second first aid kit for field trips if the center takes children on field trips. The first aid kit shall include the following items:

(a) disposable gloves;

(b) assorted sizes of bandaids;

(c) gauze pads and roll;

(d) adhesive tape;

(e) antiseptic or a topical antibiotic;

(f) tweezers; and

(g) scissors.

(4) Each first aid kit shall be in a closed container, readily accessible to staff but inaccessible to children.

(5) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency exit plan;

(e) an emergency relocation site where children may be housed if the center is uninhabitable;

(f) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(g) the transportation route and means of getting staff and children to the emergency relocation site;

(h) a means of accounting for each child's presence in route to and at the relocation site;

(i) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;

(j) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(k) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(l) staff assignments for specific tasks during an emergency.

(6) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(7) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(8) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.

(9) The provider shall post emergency exit plans in conspicuous locations in each area or classroom occupied by children or staff. The emergency exit plan shall identify the reader's location within the building, and shall show the exit paths and the locations of the fire extinguishers and fire alarm pulls.

(10) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(11) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(12) The provider shall conduct drills for disasters other than fires at least once every six months.

(13) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(14) The center shall vary the days and times on which fire and other disaster drills are held.

R430-100-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) There shall be at least two caregivers with the children at all times when there are more than 8 children or more than 2 infants present.

(4) The licensee shall maintain the minimum caregiver to child ratios and group sizes in Table 5 for single age groups of children.

TABLE 5
Minimum Caregiver to Child Ratios and Group Sizes

Ages of Children	# of Caregivers	# of Children	Maximum Group Size
birth - 23 months	1	4	8
2 years old	1	7	14
3 years old	1	12	24
4 years old	1	15	30
5 years old and school age	1	20	40

(5) A center constructed prior to 1 January 2004 which has been licensed and operated as a child care center continuously since 1 January 2004 is exempt from maximum group size requirements, if the required caregiver to child ratios are maintained, and the required square footage for each classroom is maintained.

(6) Ratios and group sizes for mixed age groups are determined by averaging the ratios and group sizes of the ages represented in the group, with the following exception: if more than half of the group is composed of children in the youngest age group, the caregiver to child ratio and group size for the youngest age shall be maintained.

(7) Table 6 represents the caregiver to child ratios and group size for common mixed age groups.

TABLE 6
Minimum Caregiver to Child Ratios and Group Sizes
for Mixed Age Groups

TWO MIXED AGES	# of Caregivers	# of Children	Maximum Group Size
2 and 3 years	1	10	19
3 and 4 years	1	14	27
4 and 5 years and school age	1	18	35

THREE MIXED AGES	# of Caregivers	# of Children	Maximum Group Size
2, 3, and 4 years	1	11	23
3, 4, and 5 years and school age	1	16	31

FOUR MIXED AGES	# of Caregivers	# of Children	Maximum Group Size
2, 3, 4 and 5 years and school age	1	13	27

(8) Infants and toddlers may be included in mixed age groups only when 8 or fewer children are present at the center.

(9) If more than 2 infants or toddlers are included in a mixed age group, there shall be at least 2 caregivers with the group.

(10) During nap time the caregiver to child ratio may double for not more than two hours for children age 18 months and older, if the children are in a restful or non-active state, and if a means of communication is maintained with another caregiver who is on-site. The caregiver supervising the napping children must be able to contact the other on-site caregiver without having to leave children unattended in the napping area.

(11) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center, but are counted in the maximum group size.

R430-100-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a locked cabinet or area, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, strings and cords long enough to encircle a child's neck, such as those found on pull toys, window blinds, or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 3 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall be surrounded by cushioning materials, such as mats at least 1 inch thick, in a 3 foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(10) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(11) There shall be no trampolines in the indoor play area.

R430-100-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center by the person dropping the child off and picking the child up, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R430-100-14. Child Health.

(1) No child may be subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

(4) The provider shall not admit any child to the center without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(5) The provider shall not admit any child to the center without a signed health assessment completed by the parent which shall include:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and,

(f) any other special health instructions for the caregiver.

(6) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

R430-100-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

(d) The provider shall post the current week's menu for parent review.

(2) The provider shall offer meals or snacks at least once every three hours.

(3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) The provider shall post a list of children's food allergies and sensitivities in the food preparation area, and shall ensure that caregivers who serve food to children are aware of this information for the children in their assigned group.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's full name, and refrigerated if needed.

R430-100-16. Infection Control.

(1) Staff shall wash their hands thoroughly for at least 20 seconds with liquid soap and warm running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding children;

(c) before and after diapering a child;

(d) after using the toilet or helping a child use the toilet;

(e) before administering medication;

(f) after coming into contact with body fluids, including breast milk;

(g) after playing with or handling animals;

(h) when coming in from outdoors; and

(i) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly for at least 20 seconds with liquid soap and warm running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with body fluids;

(d) after playing with animals; and

(e) when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall post handwashing procedures at each handwashing sink, and they shall be followed.

(6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

(8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(11) The licensee shall ensure that all employees are tested for tuberculosis (TB) within two weeks of hire by an acceptable

skin testing method and follow-up.

(12) If the TB test is positive, the caregiver shall provide documentation from a health care provider detailing:

(a) the reason for the positive reaction;

(b) whether or not the person is contagious; and

(c) if needed, how the person is being treated.

(13) Persons with contagious TB shall not work or volunteer in the center.

(14) An employee having a medical condition which contra-indicates a TB test must provide documentation from a health care provider indicating they are exempt from testing, with an associated time frame, if applicable. The provider shall maintain this documentation in the employee's file.

(15) Children's clothing shall be changed promptly if they have a toileting accident.

(16) Children's clothing which is wet or soiled from body fluids:

(a) shall not be rinsed or washed at the center; and

(b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(17) If the center uses potty chairs, the provider shall clean and disinfect them after each use.

(18) Staff who prepare food in the kitchen shall not change diapers or assist in toileting children.

(19) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(20) The center shall not care for children who are ill with an infectious disease, except when a child shows signs of illness after arriving at the center.

(21) The provider shall separate children who develop signs of an infectious disease after arriving at the center from the other children in a safe, supervised location.

(22) The provider shall contact the parents of children who are ill with an infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

(23) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(24) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R430-100-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications.

(2) All over-the-counter and prescription medications shall:

(a) be labeled with the child's name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a covered container with a tight fitting lid.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

(a) the name of the medication;

(b) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

(c) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

(a) wash their hands;

(b) check the medication label to confirm the child's name;

(c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) administer the medication; and

(e) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

(9) The provider shall not keep medications at the center for children who are no longer enrolled.

R430-100-18. Napping.

(1) The center shall provide children with a daily opportunity for rest or sleep in an environment that provides subdued lighting, a low noise level, and freedom from distractions.

(2) Scheduled nap times shall not exceed two hours daily.

(3) A separate crib, cot, or mat shall be used for each child during nap times.

(4) Mats and mattresses used for napping shall be at least 2 inches thick and shall have a smooth, waterproof surface.

(5) The provider shall maintain sleeping equipment in good repair.

(6) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and disinfect it as needed, but at least weekly.

(7) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and disinfect it prior to each use.

(8) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and disinfect sleeping equipment prior to each use.

(9) A sheet and blanket or acceptable alternative shall be used by each child during nap time. These items shall be:

(a) clearly assigned to one child;

(b) stored separately from other children's when not in use; and,

(c) laundered as needed, but at least once a week, and prior to use by another child.

(10) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.

(11) Cots and mats may not block exits.

R430-100-19. Child Discipline.

(1) The provider shall inform caregivers, parents, and children of the center's behavioral expectations for children.

(2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.

(4) Discipline measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-100-20. Activities.

(1) The provider shall post a daily schedule for preschool and school-age groups. The daily schedule shall include, at a minimum, meal, snack, nap/rest, and outdoor play times.

(2) Daily activities shall include outdoor play if weather permits.

(3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities in preschool and school age groups.

(4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.

(5) If off-site activities are offered:

(a) the provider shall obtain written parental consent for each activity in advance;

(b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:

(i) the child's name;

(ii) the parent's name and phone number;

(iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;

(iv) the names of people authorized by the parents to pick up the child; and

(v) current emergency medical treatment and emergency medical transportation releases;

(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;

(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;

(e) children shall wear or carry with them the name and phone number of the center, but children's names shall not be used on name tags, t-shirts, or other identifiers; and

(f) caregivers shall provide a way for children to wash their hands as specified in R430-100-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.

(6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R430-100-21. Transportation.

(1) Any vehicle used for transporting children shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) have a current vehicle registration and safety inspection;

(d) be maintained in a safe and clean condition;

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;

(f) contain a first aid kit; and

(g) contain a body fluid clean up kit.

(2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The adult transporting children shall:

(a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;

(b) have with them written emergency contact information for all of the children being transported;

(c) ensure that each child being transported is wearing an appropriate individual safety restraint;

(d) ensure that no child is left unattended by an adult in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

R430-100-22. Animals.

(1) The provider shall inform parents of the types of animals permitted at the facility.

(2) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.

(4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(5) Children shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) There shall be no animals or animal equipment in food preparation or eating areas.

(7) Children shall not handle reptiles or amphibians.

R430-100-23. Diapering.

If the center diapers children, the following applies:

(1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.

(2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(3) Caregivers shall not leave children unattended on the diapering surface.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(6) Caregivers shall clean and disinfect the diapering surface after each diaper change.

(7) Caregivers shall wash their hands before and after each diaper change.

(8) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.

(9) The provider shall daily clean and disinfect containers where soiled diapers are placed.

(10) If cloth diapers are used:

(a) they shall not be rinsed at the center; and

(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diapering service container.

(11) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.

(12) Caregivers shall keep a written record daily for each infant and toddler documenting their diaper changes. The record shall be completed within an hour of each diaper change, and shall include the time of the diaper change and whether the diaper was wet, soiled, or both.

(13) Care givers whose designated responsibility includes the care of diapered children shall not prepare food for children or staff outside of the classroom area used by the diapered children.

R430-100-24. Infant and Toddler Care.

If the center cares for infants or toddlers, the following applies:

(1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present at the center.

(2) Infants and toddlers shall not use outdoor play areas at the same time as older children.

(3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(4) The provider shall clean and sanitize high chair trays prior to each use.

(5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(6) Baby food, infant formula, and breast milk for infants that is brought from home for an individual child's use must be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(7) Infant formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(8) To prevent burns, heated bottles shall be thoroughly shaken and tested for temperature before being fed to children.

(9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(10) Only one infant shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

(12) Infant cribs must:

(a) have tight fitting mattresses;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail; and

(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.

(13) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(14) Each infant and toddler shall follow their own pattern of sleeping and eating.

(15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the food and beverages eaten, and the times the child slept.

(16) Infant walkers with wheels are prohibited.

(17) Infants and toddlers shall not have access to objects made of styrofoam.

(18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(20) Awake infants shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(21) Mobile infants and toddlers shall have freedom of movement in a safe area.

(22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.

(23) All toys used by infants and toddlers shall be cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth; and

(c) after being contaminated by body fluids.

R430-100-25. Penalty.

The Department may impose civil money penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter.

KEY: child care facilities, child care, child care centers
December 30, 2006 26-39
Notice of Continuation August 13, 2007

R510. Human Services, Aging and Adult Services.
R510-1. Authority and Purpose.
R510-1-1. Authority.

(1) These rules are promulgated in accordance with the following laws:

(a) Older Americans Act, Pub. L. No. 106-501, 42 USC Section 3001 et seq.

(b) Utah Division of Aging and Adult Services, Section 62A, Chapter 3, Parts 1, 2, and 3.

(c) Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.

(d) Social Services Block Grant, 45 CFR Parts 16, 74, and 96.

R510-1-2. Purpose.

The purpose of this rule is for clarification of statutory authority and definition problems.

KEY: law, Older Americans Act*
April 17, 2001 62A-3-101 through 62A-3-312
Notice of Continuation August 21, 2007 42 USC 3001

R510. Human Services, Aging and Adult Services.
R510-100. Funding Formulas.
R510-100-1. Older Americans Act.

(1) Compliance with State and Federal Law for Older Americans Act (OAA).

(a) The Division of Aging and Adult Services (Division) shall develop an intrastate funding formula for distribution of OAA, Title III: Grants for State and Community Programs on Aging funds and State general funds for social and nutrition services which complies with 45 CFR, Subchapter C, Part 1321.37 and with Section 62A-3-108.

(b) The formula shall be reviewed whenever a new State Plan on Aging is required to be submitted.

(2) Affected Funding Sources for OAA.

(a) The funding formula shall include:

(i) All federal funds received under Title III of the OAA with the exception of:

(A) Allowable State Division administrative funds, and

(B) Funds allocated to the State-delivered Long-Term Care Ombudsman Program.

(ii) All state funds appropriated for Title III social and nutrition services.

(b) The funding formula shall not include state or federal funds appropriated for:

(i) The Alternatives Program,

(ii) Adult Services under the Division, or

(iii) Funds identified under Section 62A-3-108(2).

(3) Funding Formula Factors for OAA.

(a) The funding formula shall incorporate the following factors:

(i) Base factor divided equally among the twelve Area Agencies on Aging (AAA) in existence on July 1, 1986;

(ii) Population factor comprised of each AAA's proportion of the State's weighted elderly population; and

(iii) Land area factor consisting of each AAA's proportion of the State's total adjusted square miles.

(b) Weighted elderly population shall consist of:

(i) The number of persons age 60 and over who have annual incomes below 125% of the poverty level, plus

(ii) The number of persons age 75 and over weighted two times, plus

(iii) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(4) Base Restrictions for OAA.

(a) If any AAA in existence on July 1, 1986, should in the future sub-divide into two or more AAAs, the base amount allocated to the original AAA shall be divided proportionally among the new AAAs.

(5) Base Factor Funds.

(a) Base factor funds shall consist of those federal Title III and state funds appropriated for Title III social and nutrition services and allocated as base funds in FY 2003.

(6) Funding Distribution for OAA.

(a) Distribution of funds under the formula shall be as follows:

(i) Base factor funds;

(ii) 7.5% of total remaining formula funds allocated to the land area factor; and

(iii) 92.5% of total remaining formula funds allocated to the population factor.

R510-100-2. In-Home Services.

(1) Affected Funding Sources for In-Home Services.

(a) The funding formula shall include all federal and state funds appropriated for use by local area agencies on aging to be used for in-home services with the exception of:

(i) funds allocated under Section R510-100-1 and

(ii) funds identified under Section 62A-3-108(2), and

(iii) Adult Services funded under the Division pursuant to Section 62A-3-301 et seq.

(2) Funding Formula Factors for In-Home Services.

(a) The funding formula shall include the following factors:

(i) Land area factor consisting of each AAA's proportion of the state's total adjusted square miles.

(ii) Population factor comprised of each AAA's proportion of the designated population factors.

(iii) Base amount of $16,000 allocated to each Area Agency on Aging.

(b) Designated population factors shall consist of the following:

(i) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over weighted 10%,

(ii) The number of all persons age 18-59 weighted 5%,

(iii) The number of all persons 60 years of age and over weighted 55%, and

(iv) The number of all persons 75 years of age and over weighted 30%.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(3) Funding Distribution for In-Home Services.

(a) Distribution of funds under the formula will be as follows:

(i) 10% of total formula funds allocated to the land area factor; and

(ii) 90% of total formula funds allocated to the population factor.

(4) Funding Formula Phase-In for In-Home Services.

(a) Funds allocated in fiscal year 1993 shall be held harmless.

(b) New funds above the fiscal year 1993 level shall be allocated by the in-home services funding formula.

(5) The following is the funding formula adjustment phase-in period for In-Home Services:

(a) The Division is authorized to apply an adjustment to the allocation calculated in accord with funding formula contained in paragraph (2) of this section for five fiscal years beginning with FY 2004.

(b) Each adjustment shall be applied to the allocation to all area agencies calculated in accord with the funding formula contained in paragraph (2) of this section and shall represent 20% of the difference between the funds allocated in accord with paragraph (2) of this section and the allocation for FY 2004.

R510-100-3. Long-Term Care Ombudsman Program.

(1) Affected funding sources for the Long-Term Care Ombudsman (LTCO) Program.

(a) All Federal and State funds received for delivery of the LTCO Program with the exception of State Division administrative funds.

(i) Funding Formula for the LTCO Program.

The funding formula for the LTCO Program shall allocate dollars to each designated AAA based on the following factors:

(A) Federal Funds.

Using the base allocation of federal funds available for the LTCO program during State Fiscal Year 1993, each designated AAA will receive an equal share of the dollars available.

Additional funds that may become available above the base allocation will be distributed based on each AAA proportion of long-term care beds in the State as reported by the State

Department of Health and the Division for the preceding year. Long-term care beds shall include licensed nursing facility beds, licensed residential care beds, and approved adult foster care beds.

(B) State General Funds.

A base allocation of $60,000 shall be distributed equally to each designated AAA.

State General funds in excess of this base allocation shall be distributed based on each AAA's proportion of long-term care beds in the State, as reported by the State Department of Health and the Division for the preceding year.

KEY: elderly, funding formula, long-term care ombudsman
September 11, 2003 62A-3-108
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-101. Carryover Policy for Title III: Grants for State and Community Programs on Aging.
R510-101-1. Policy.

In accordance with Federal regulation 45 CFR, Chapter XIII Subchapter C, Part 1321.37, the Division of Aging and Adult Services distributes OAA Title III social and nutrition dollars to AAA according to an established intrastate funding formula. All Title III funds of a specified federal year unspent at the end of that year's state contract period shall be re-contracted to the AAA in the succeeding year's contract. Administration of federal carryover funds must conform with federal laws and regulations. All Title III funds carried over by the AAA from one state fiscal year to the next must be spent according to a written amendment to the Area Plan as approved by the Division.

R510-101-2. Process.

2.1 The amounts of carryover funds in all Title III categories shall be determined at the time of the final state fiscal year financial report as submitted by the AAA and as reviewed and finalized by the Division.

2.2 Upon Division approval of an Area Plan amendment which designates amount and use of carryover funds, the Division will amend the current state year AAA contract to add all Title III carryover funding from the previous year.

2.3 The Division shall spend out the previous year's funds prior to spending current funds.

KEY: elderly, carryover funding*
1987 **62A-3-104**
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-102. Amendments to Area Plan and Management Plan.
R510-102-1. Area Plan Amendments.

A. Area Plan Amendments will be made only with the approval of the Division.

B. The AAA must submit Area Plan amendments in accordance with the uniform area plan format and other instructions issued by the Division.

KEY: elderly, service coordination
1992 62A-3-104
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-103. Use of Senior Centers by Long-Term Care Facility Residents Participating in Activities Outside Their Planning and Service Area.
R510-103-1. Criteria for Use.

(1) Eligibility: Long-term care facility residents shall have access to senior centers and programs operated within which receive financial assistance through the Older Americans Act (OAA), Social Services Block Grant, or any other source of federal funds.

(2) Fees and Contributions:

(a) Facility residents who individually participate and who are age 60 or over are encouraged to donate at the contribution rate as established by the responsible AAA Advisory Council and/or Nutrition Council for all programs. The amount of contribution will be confidential.

(b) Facility residents who are under age 60 shall be subject to the fee for participants under 60 as established by the responsible AAA Advisory Council and/or Nutrition Council.

(c) Long-term care residents who elect to take a special class or participate in an activity where there is a charge will be required to pay the fee in accordance with the senior center's policy. This would include requested transportation costs to and from such activities.

(d) The source of contributions and fees for group participants shall be the long-term care facility's responsibility if the use of senior centers is an activity planned by the long-term care facility.

(e) Contributions and fees shall not originate from the resident's personal needs allowance unless participation in the senior center is totally at the request of an individual or their family or legally responsible person, and participation in senior centers is not a component of the facility's activity plan.

(6) Visiting senior center groups shall be given an opportunity to donate a confidential contribution to the planned group activity.

(3) Supervision: Residents who participate in the senior center programs as part of a long-term care group planned activity and/or who require supervision shall be accompanied by a facility staff member or other responsible parties.

(4) Advance Reservations: As is the standard policy for all senior center participants, activities by long-term care facility residents who participate in senior center activities shall require an advanced reservation.

(5) Complaints Regarding Adherence:

All complaints regarding adherence to this regulation by long-term care facilities should first be reported to the facility administrator. If this action does not resolve the complaint, the concern should be directed to the State Long-Term Care Ombudsman (LTCO) Program where its resolution will be coordinated with the appropriate agencies.

KEY: elderly, senior centers, nursing homes
February 3, 1999 62A-3-104(4)
Notice of Continuation August 21, 2007 62A-3-107 through 108

R510. Human Services, Aging and Adult Services.
R510-106. Minimum Percentages of Older Americans Act, Title III Part B: State and Supportive Services Funds.
R510-106-1. General Principles.

(1) In accordance with the (OAA), as amended in 2000, the following general principles apply to setting minimum percentages which must be spent for Access, In-Home, and Legal Assistance:

(a) In-Home, Access, and Legal Assistance are priority services.

(b) "The minimum percentage is intended to be a floor, not a ceiling. AAAs are encouraged to devote additional funds to each of these service areas to meet local needs." (Source: House of Representatives Conference Report regarding the 1987 Amendment to the Older Americans Act.)

(c) AAAs should be given flexibility to administer their programs at the local level.

(d) The minimum percentage should be applied to both Title IIIB and State Service Dollars.

(2) The minimum percentages shall be established at: 8% for Access Services, 8% for In-Home Services, and 2% for Legal Assistance.

(3) The minimum percentages will be based upon Title III B dollars and State Service dollars that are distributed by formula to the AAAs.

(4) The minimum percentages will be reviewed on an annual basis.

R510-106-2. Criteria for Approval of Title IIIB Priority Services Waiver.

(1) AAAs which do not plan to fund a Title IIIB priority category of service at the required minimum percentage must request a waiver. In order to be approved, the waiver request must demonstrate to the State that the need for the service is adequately met through other means.

(a) The waiver request must include:

(i) Categories of service to be waived, i.e. access, in-home, or legal.

(ii) Extent of waiver requested, i.e. request to provide zero funding or request to provide some funding, but not at the minimum percentage required.

(iii) Justification that services provided in the planning and service area for the waiver category are sufficient to meet the need. Justification should include: types of services in the category available in the planning and service area, funding sources and amounts available, history of service usage, needs assessment data, sources of information, efforts to publicize services, comments from providers of services, waiting lists, etc.

(iv) Documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, including:

(A) Copies of publicity to conduct a hearing.

(B) Lists of individuals and agencies notified.

(C) Lists of individuals or service providers who requested a hearing.

(v) If a hearing is requested, documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, will be needed, including:

(A) copies of publicity for to conduct a hearing;

(B) lists of individuals and agencies notified; and

(C) lists of individuals or service providers who requested a hearing.

(vi) Record of public hearing.

(2) In order for the Area Agency on Aging (AAA) to demonstrate public knowledge about ability to request a hearing, it is recommended that the AAA:

(a) Publicize the hearing in advance so that interested parties can arrange to attend.

(b) Use publicity means that will enable potentially interested parties to be aware of the ability to request a hearing, to have sufficient background to understand the purpose of the hearing, and to be able to testify at the hearing if desired. In addition to a legal notice in the classified section of a newspaper, letters, flyers, larger newspaper articles or other similar announcements are recommended for the purpose of granting a waiver.

(c) Notify interested parties of the ability to request a hearing, such as those individuals or groups specified below:

(i) All Categories of Service: Clients, potential clients, senior advocates, local advisory council members, designated state advisory council member for the area, representatives or relatives of clients, local elected officials, Department of Human Services, agency staff, and State Division of Aging and Adult Services staff, etc.

(ii) Access Services: Information and referral providers, public or private transportation providers, outreach staff.

(iii) In-Home Services: Chore provider agencies, home health agencies, local health departments, homemaker provider agencies, friendly visitor and telephone reassurance agencies or volunteers, homemakers, personal care aides, and home health aides.

(iv) Legal Assistance: Legal Services Developer, Utah Legal Services Corporation, representatives of the Utah Bar Association.

KEY: elderly
June 30, 2003 **62A-3-101 et seq.**
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-107. Title V Senior Community Service Employment Program Standards and Procedures.
R510-107-1. Purpose.

(1) Provide useful part-time community service employment for persons with low incomes who are 55 years old or older and provide useful community services.

R510-107-2. Program Standards and Procedures.

(1) The Division's standards and procedures for this program are incorporated by reference to be 20 CFR Part 641 as published April 9, 2004.

KEY: elderly, employment
August 17, 2004 62A-3-104
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-108. Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act.
R510-108-1. Definition.

For the purpose of reporting for Title III of the (OAA), rural shall be defined as any county having a total population of less than 100 persons per square mile. This means that all counties in Utah will be considered rural for Title III reporting except Davis, Salt Lake, Utah, and Weber Counties.

KEY: elderly, rural policy
1988 62A-3-104
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-109. Definition of Significant Population of Older Native Americans.
R510-109-1. Definition.

A Planning and Service Area has a "significant population of older Native Americans" when 50% or more of its 60+ minority population is older Native Americans.

KEY: elderly, native american, population
1989 62A-3-104
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-110. Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services.
R510-110-1. Definitions.

A. Eldercare: a service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. The service includes information and referral, but may extend to other types of services and programs, as determined by the corporation.

B. Case Management: a service with several components which collectively make up case management. These components include a combination of some or all of the following:

(1) Intake and Screening: an initial contact with the AAA from the company requesting case management services.

(2) Assessment: a face-to-face evaluation utilizing a standardized Division assessment tool. The assessment provides some or all of the following information regarding the individual:

(a) functional level, including ADL and IADL status;
(b) cognitive status;
(c) health status;
(d) current living arrangement; and
(e) use of formal and informal support systems.

(3) Care Planning: a determination of the appropriate and available mix of formal and informal services and support systems required to meet the individual's long-term care needs. A care plan is then developed.

(4) Care Plan Implementation: assessment and coordination of the appropriate services. It also includes assisting the individual to make the necessary financial arrangements as required.

(5) Continued Care Management: monitoring, reassessment, and termination components of case management. More specifically this includes:

(a) monitoring the service delivery, quality of care provided, and status of the individual;

(b) reassessing the individual's cognitive status, health status, and functional level as they relate to the care provided, and making appropriate changes as needed; and

(c) closing the case once an individual no longer requires or is eligible for case management.

C. Entrepreneurial Activities of AAAs include the manufacturing, processing, selling, offering for sale, rental, leasing, delivering, dispersal or advertising of goods or services.

R510-110-2. Purpose.

A. A basic mission of AAAs under the (OAA) is to foster the development of comprehensive and coordinated systems of services for all older persons. Activities such as eldercare and case management and other entrepreneurial endeavors, which are intended to enhance the scope and quality of the system of services available to older persons in a Planning and Service Area (PSA), are consistent with the purpose of an AAA. As a result, the Division encourages the Utah AAAs to engage in appropriate relations with private corporations in the development and implementation of eldercare programs, case management, and related activities. Utah AAAs may engage in these activities provided that those activities conform to the provision of this policy issuance.

B. The Division recognizes that an AAA, in lieu of a direct contract with a corporation, insurance company, or brokering organization may elect to provide the services directly or to join with other AAAs in those contracts. These arrangements are permissible, provided that the provisions of this policy are followed.

R510-110-3. General Provisions.

A. An AAA which engages in corporate eldercare and private case management services:

(1) shall assure that its statutory duties are maintained as prescribed in the OAA, Title III: Grants for State and Community Programs on Aging, as amended, to focus on the needs of older persons in greatest need, with particular attention to low-income minority persons; and to engage only in activities which are consistent with its statutory mission as prescribed in the OAA as amended, related federal rules and regulations, and related state policy;

(2) shall assure that activities specified under the Area plan and subsequent amendments, as approved by the Division, will not be reduced as a result of activities engaged in under this policy;

(3) shall not use Title III, Title XIX, SSBG or state funds to supplement third-party payments made by a corporation under a contract covered by this policy;

(4) shall assure that any third-party payment under a private contract fully covers the cost of services provided, including administrative and overhead costs, unless a public/private partnership is established whereby the state or federal governments or other funding source agrees to subsidize the costs of private case management or older care;

(5) shall account for private corporate contract revenues and expenditures separately from federal and state funds awarded under the Area Plan contract;

(6) shall include in their Area Plan on Aging and amendments thereto an explanation describing their relationships with private corporations and services rendered to older persons as a consequence of those agreements or contracts. These AAAs, as part of their Area Plans, shall also sign a statement of assurance of compliance with the provisions of this policy.

B. The provision of IVA(2), above, does not constrain the AAA from utilizing OAA Title III Part B: Supportive Services and Senior Centers funds to develop new resources and coordinate services to develop corporate eldercare and private case management services systems in its PSA. This complies with the statutory mission of AAAs of fostering the development of comprehensive and coordinated systems of services for all older persons, which includes all types of services and resources, both public and private, which are available to serve older persons.

C. AAA offices may engage in entrepreneurial activities if this is in response to a demonstrated need and the funds raised by these activities are used for the following purposes:

(1) to further extend services and opportunities for senior citizens, or

(2) to initiate services and opportunities for seniors, provided that these services or opportunities are compatible with the AAA functions and goals.

R510-110-4. Requirements for Contracts Between AAAs and Corporations, Insurance Companies, and Related Organizations.

A. General Provisions:

(1) An AAA cannot execute an agreement or contract that demands exclusivity; an AAA must be free to negotiate other similar agreements or contracts with other companies.

(2) An AAA cannot enter into an agreement or contract that obligates it to be identified with or to promote the company or its products or places it in a conflict of interest with its public mission.

(3) A contract must state that the AAA has the right to refuse services to a company or its employees or clients in the event that there is a potential conflict of interest for the AAA, as identified by the AAA or the Division.

(4) A contract must provide that an AAA has the right to reveal its findings, plans, and recommendations to the client,

regardless of the company's final decision regarding client eligibility and services provided.

(5) A contract must provide that all information as to personal facts and circumstances obtained by the AAA shall be treated as privileged communications, shall be held confidential and shall not be divulged without the written consent of the individual receiving the services, his attorney, or his legal guardian, except as is required by the corporation, insurance company, or brokering organization, or as may be required by the Division for the purposes of monitoring for compliance with the provisions of this policy, or as directed by the court. However, nothing prohibits the disclosure of information in summary, statistical, or other form which does not identify particular individuals.

(6) A contract must hold the AAA and the Division, where it is a party to the contract, harmless and defend them in any actions brought against them on the basis of companies' policies or decisions regarding benefits and services.

(7) Provisions of the contract may not require the withholding of information or otherwise limit the ability of the AAA to judge or act in the public interest; or restrict the ability of the Division to exercise appropriate oversight of the AAA in its fulfillment of its public mission and responsibilities.

B. Specific Provisions Regarding Long-Term Care Insurance Case Management Contracts: In contracts covering long-term care insurance case management services, companies must assure that:

(1) they are financially stable, are in good standing, and are in compliance with all statutes and rules governing insurance companies in the state of Utah;

(2) their long-term care insurance policies comply with the Utah insurance laws.

R510-110-5. Monitoring by the State Division of Aging and Adult Services.

the Division through its program monitoring activities, including financial audits, shall periodically assess AAA compliance through the following actions:

A. Review and approval of the AAA Area Plan and amendments, to be done annually and more frequently for modifications as submitted. The Division office will review:

(1) explanation describing AAA relationship with private corporations;

(2) signed statement of assurance of compliance with this policy; and

(3) related data in program and service costs in Area Plan.

B. Annual review of financial audits. The Division will review:

(1) adequacy of AAA financial control system;

(2) adequacy of AAA financial system to maintain separate accounting for different funds, including private contracts; and

(3) adequacy of AAA support documents to justify costs to each funding source.

C. Field visits and assessments of AAA activities: the Division monitoring and assessment will include a review for compliance with policy contained herein, including contract requirements.

D. When a finding shows the AAA to be out of compliance with the provisions of this policy or contract requirements, the Division may impose one or more of the following: 1) corrective actions; 2) special conditions included in the Division/AAA Contract; 3) withhold funds; 4) withhold or deny approval of the Area Plan. Process for appeal of these actions is outlined in Section 63-56-45 to 63-56-64, Utah Procurement Code.

KEY: eldercare
1991 **62A-3-104**
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-111. Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC).
R510-111-1. State Funds for NSSC Programs.

(1) Purpose:

(A) The purpose of state funds for National Senior Service Corps (NSSC) programs is to provide NSSC programs with state general funds to help pay volunteer travel expenses.

(B) Definition and Service Scope:

(i) The Corporation for National and Community Service, formerly known as ACTION, a federal agency, monitors the three programs that make up the NSSC. The three programs are the Senior Companion Program, Foster Grandparent Program, and the Retired and Senior Volunteer Program.

(ii) For the purposes of this subsection, a Senior Volunteer is defined as an individual who is 60 years of age or over, or is 55 or over for Retired and Senior Volunteer Program, and is currently participating in one of the NSSC programs.

(iii) Service scope: senior volunteer job placement or site locations are not limited to senior services only. They are determined by the needs of the community and may include elementary schools, hospitals, and parks, to enhance intergenerational interaction and society's awareness of the contributions seniors make in their communities.

(C) The Division's Responsibilities:

(i) The Division will allocate state general funds, through legislative appropriation, to the local NSSC programs designated by the Corporation for National and Community Service and the Division.

(ii) The Division will be held accountable for state NSSC funds and will monitor contractors to insure that those funds are being expended in compliance with state legislative intent.

(iii) State funds for NSSC programs will be used for volunteer travel expenses support.

(A) "Volunteer travel expenses support" is defined as a payment made to retired and senior volunteers for mileage reimbursement, not to exceed the state's current rate by more than $0.05; excess auto insurance; gasoline, maintenance and insurance for service vehicles utilized for volunteer activities; van or bus drivers' salaries; contracts with transportation companies, bus fare, cab fare or passes, or other related direct NSSC volunteer travel cost.

(B) If state funds for NSSC programs are used as federal match by local volunteer programs, Corporation for National and Community Service travel reimbursement rules apply. Under these rules, volunteer programs are limited to reimbursing volunteers for the cost of traveling from their home to their volunteer station and back. Funds used as federal match can not be used to reimburse volunteers for transportation costs incurred while performing their volunteer assignments. Volunteer stations are responsible for reimbursing these costs.

(D) Contractor Responsibilities:

(i) Contractor will be held accountable for the distribution of state funds to appropriate NSSC programs. Contractor will monitor expenditures to ensure compliance with state legislative intent, as is provided in sub-section 1(C)(ii) above.

KEY: aging, travel funds, volunteer, National Senior Service Corps*
1994 **62A-3-104**
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-200. Long-Term Care Ombudsman Program Policy.
R510-200-1. Purpose.

A. The Long-term Care Ombudsman (LTCO) Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the State.

B. Operation of the LTCO Program is a joint responsibility of the Division and local AAAs. Authority to administer the LTCO Program is derived from the Older Americans Act (OAA) Title VII: Allotments for Vulnerable Elder Rights Protection Activities and Section 62a-3-201 et seq.

C. The Division will establish a State Office of LTCO.

D. The State LTCO is responsible for:

(1) oversight of the statewide LTCO program;

(2) providing training to local LTCO staff and volunteers;

(3) provision of public information regarding the LTCO program;

(4) working with federal agencies, the State Legislature, other units of state government and other agencies to obtain funding and other resources;

(5) developing cooperative relationships among agencies involved in long-term care;

(6) resolving conflicts among agencies regarding long-term care;

(7) assuring consistent, statewide reporting of LTCO program activities:

(8) monitoring local LTCO programs;

(9) providing technical assistance to local LTCO programs;

(10) maintaining close communication and cooperation in the LTCO statewide network;

(11) recommending rules governing implementation of the LTCO program; and

(12) providing overall leadership for the Utah LTCO program.

E. The Division may employ Regional Ombudsmen to assist the State LTCO in meeting his or her responsibilities. In addition to assisting the State LTCO, Regional Ombudsmen are responsible to:

(1) Spend a majority of their time providing ombudsman services, including but not limited to, investigating and resolving complaints when local ombudsmen transfer a case, providing services to assist elderly residents of long-term care facilities, informing and educating elderly residents about their rights, providing administrative and technical assistance to local ombudsmen and volunteers, providing systemic advocacy, providing training to long-term care facilities, and assisting in the development of family and resident councils;

(2) Provide monitoring, oversight, assistance and leadership to local ombudsmen and volunteers in their region;

(3) Ensure that all ombudsmen in their region adhere to established policy and procedure; and

(4) Improve consistency and quality of Ombudsmen services in their region.

F. AAAs are responsible for daily operation of the program, either directly or by contract, as defined in these rules.

G. The Division, State LTCO and AAAs must work together to protect elderly residents, promote quality care in long term care facilities, and promote the LTCO program.

R510-200-2. Definitions.

A. "AAA" means area agency on aging as designated by the Division of Aging and Adult Services.

B. "APS" means adult protective services.

C. The Division means the Division of Aging and Adult Services within the Utah Department of Human Services.

D. "Elderly resident" means an adult 60 years of age or older who resides in a long-term care facility.

E. Long-term ombudsman is a person, operating within the guidelines of the Older American Act and the policies of the Division, who advocates for elderly residents of long-term care facilities to ensure the quality and adequacy of care received.

F. "Local LTCO" means the local program and personnel designated by the Division, through each AAA, to implement the (LTCO) Program within a defined geographic area.

G. "Responsible Agency" means the agency responsible to investigate or provide services on a particular case.

H. "State LTCO" means long-term care ombudsman personnel within the Division.

I. "Long-Term Care Facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

R510-200-3. Local LTCO Program Administrative Standards.

A. AAAs shall operate the LTCO Program in accordance with the following standards:

(1) Supervision: All local LTCO shall have an identified supervisor. The person supervising the ombudsman shall meet all requirements for a supervisor as specified by the AAA and shall have at least a general knowledge of long-term care facilities.

B. Staffing: Each AAA shall recommend for certification one or more paid or volunteer staff members to serve as local LTCO.

(a) Persons assigned this responsibility shall have either education or experience in one or more of the following areas: gerontology, long-term care, health care, legal or human service programs, advocacy, complaint and dispute resolution, mediation or investigating.

(b) Assigned individuals shall be certified by the State LTCO within six months after assuming a local LTCO role.

B. The AAA shall have primary responsibility to provide for certified back-up to the local LTCO. AAAs may enter into cooperative agreements with other AAAs to provide for LTCO back-up. In emergency situations, AAAs may request back-up support from the State LTCO.

C. Local ombudsmen shall have no conflict of interest which would interfere with performing the function of this position, including:

(1) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) ownership or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility or a long-term care service;

(3) employment by, or participation in the management of, a long-term care facility;

(4) receiving, or having the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility.

D. AAAs shall establish, and specify in writing, mechanisms to identify and remove conflicts of interest and to identify and eliminate relationships described in paragraph 3 including mechanisms such as:

(1) methods by which the AAA will examine individuals and immediate family members to identify conflicts; and

(2) actions the AAA will require individuals and family members to take in order to remove those conflicts.

E. Local LTCO shall have the ability to act in the best interests of residents of long-term care facilities, including taking public positions on policies or actions which affect residents. Local LTCO shall not be constrained by the local

AAA or governing body from taking a stand in good-faith performance of their job.

(1) AAAs shall have on file a written description outlining the working relationship between the AAA and the ombudsman which spells out arrangements for assuring this ability.

(2) Grievance Procedure

(a) AAAs shall establish a grievance procedure to accept and hear complaints regarding an ombudsman's actions. The procedure shall allow for a final appeal to the Utah State Department of Human Services Office of Administrative Hearings.

(3) Records System

(a) AAAs shall maintain a records classification and retention program in accordance with Sections 63-2-301 and 63-2-901 and PL 89-73 42 USC 300-1 et seq.

R510-200-4. Local LTCO Classifications and Duties.

A. Ombudsman

An Ombudsman, who may be either a paid staff member or volunteer, may perform the following duties:

(1) investigate complaints and develop an action plan to resolve the complaint;

(2) provide supervision over the implementation of the action plan and any follow-up determined necessary;

(3) review complaints to set complaint response priorities;

(4) assign complaints to staff and volunteers;

(5) provide case consultation to long-term care facility staff; and

(6) perform duties of an assistant ombudsman.

B. Assistant Ombudsman

(1) An Assistant Ombudsman, who may be either a paid staff member or volunteer, may:

(a) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(b) observe actions and quality of care in long-term care facilities;

(c) perform complaint intake;

(d) provide residents, families, and the general public with information about the LTCO program and resident rights;

(e) provide public presentations;

(f) assist with resolution and follow-up on complaints while under the supervision of a Certified Ombudsman; and

(g) provide technical assistance to the general public and long-term care facility staff.

C. Ombudsman Program Director

(1) An Ombudsman Program Director, who may be the AAA director or his designee, may perform the duties of an Ombudsman, if certified as such, and shall:

(a) provide overall administration of the local ombudsman program;

(b) provide overall supervision of LTCO paid and volunteer staff;

(c) conduct quality assurance and complaint case record reviews;

(d) oversee the screening, hiring, and dismissal of LTCO staff and volunteers; and

(e) assess the need for regulatory changes to improve the quality of care and life for long-term care facility residents and advocate for the passage of those changes.

D. Non-certified Staff or Volunteers

Non-certified staff or volunteers may perform the following functions:

(a) complaint intake;

(b) provide public information and presentations regarding the LTCO program, long-term care in general, and other topics on which they may have expertise, as determined by the AAA;

(c) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(d) visit long-term care facilities and residents; and

(e) any other activity which does not expressly require certification and for which the AAA has determined the individual competent to engage in on behalf of the AAA or LTCO program.

R510-200-5. Certification Curriculum and Training Hours.

A. Assistant Ombudsman: Prior to applying for certification as an Assistant Ombudsman, an individual shall complete a minimum of 18 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall cover the following areas:

(1) An introduction to the LTCO Program, including a discussion of the scope of work of the LTCO.

(2) An overview of the long-term care system, including a discussion of:

(a) the types of long-term care facilities and providers, their organization and operations;

(b) federal and state regulations applicable to long-term care facilities and providers, with an emphasis on resident rights;

(c) long-term care resident profiles and methods of payment for long-term care services;

(d) the aging process and attitudes of aging; and

(e) the Aging Network and the relationship between the AAAs, the State LTCO, and various regulatory agencies.

(3) Ombudsman skills, including:

(a) interpersonal communication, observation, and interviewing;

(b) building working relationships with providers; and

(c) complaint handling, with an emphasis on intake.

(4) An overview of complaint resolution skills, with an emphasis on advocacy, negotiating, empowering residents, and follow-up activities.

(5) LTCO Program policies and procedures, including:

(a) confidentiality;

(b) access to facilities and residents;

(c) complaint investigation and resolution;

(d) reporting; and

(e) ethics.

(6) Case record documentation.

(7) Mediation and negotiation between residents.

(8) Any additional topics deemed appropriate by the State LTCO in consultation with the Division, AAAs, long-term care regulatory agencies and local LTCO Program Directors.

B. Ombudsman: Prior to applying for certification as a local Ombudsman, an individual shall complete a minimum of 30 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall include all training described in Section A plus an additional 12 hours of training covering the following areas:

(1) a more in-depth review of the content areas covered for candidates for certification as ombudsman representatives, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues;

(2) development of a complaint resolution action plan;

(3) legal, administrative, and other remedies;

(4) actions regarding public disclosure of actions or inactions which affect residents of long-term care facilities, including appropriateness, confidentiality of certain information, and how to work with the media;

(5) review of client records;

(6) alternative dispute resolution options for use in complaint handling; and

(7) advocacy skills.

C. Post-tests: The post-tests referred to in Sections A and B shall be developed by the State LTCO and shall be structured in sections to correspond to major training topics. If an applicant does not receive a score of at least 70% on a post-test they shall be eligible to retake the test one time within 30 days.

If they do not receive a minimum score of at least 70% on the retake test, they will need to complete the training pertaining to the test sections on which they did not receive a passing score. Upon completion, they will be allowed to take the test one additional time. If a passing score is not obtained, the applicant will be deemed by the State LTCO to not be appropriate for certification as an Assistant Ombudsman or Ombudsman.

D. Ongoing Training: To maintain certification, an assistant ombudsman must complete a minimum of 12 hours of training annually; an ombudsman must complete a minimum of 24 hours of training annually.

(1) The State LTCO will provide for at least 48 hours of LTCO specific training per year. Training shall be scheduled at various times throughout the year and in various locations throughout the State.

(2) During the first year in which a person functions as an assistant ombudsman or ombudsman the required initial training will count toward the annual training requirement;

(3) Relevant training offered in the community can serve to meet annual training requirements in lieu of state-sponsored LTCO training on an hour-for-hour basis. Documentation of attendance at a training, including a copy of the training agenda, shall be submitted to the State LTCO for approval.

R510-200-6. Registration and Certification of Ombudsmen and Assistant Ombudsmen.

A. Central Registry

(1) The State LTCO shall maintain a central registry of all local ombudsmen and assistant ombudsmen. The registry shall retain the following information on each:

(a) the ombudsman's or assistant ombudsman's name, address, and telephone number;

(b) a summary of the ombudsman's or assistant ombudsman's qualifications;

(c) the ombudsman's or assistant ombudsman's classification;

(d) the AAA with which the ombudsman or assistant ombudsman is associated;

(e) the most recent date of certification;

(f) a position description which contains any prohibitions applicable to the ombudsman or assistant ombudsman. Prohibitions may include limitation on the duties that may be performed, limitations on the providers the ombudsman or assistant ombudsman may investigate or attempt complaint resolution with, or any limitations due to a conflict of interest; and

(g) information pertaining to any decertification actions and the results of those actions.

(2) Local ombudsman and assistant ombudsman shall register with the State LTCO through the AAA within 30 days of accepting assignment as a local ombudsman or assistant ombudsman.

R510-200-7. Decertification of Ombudsmen and Assistant Ombudsmen.

Decertification of an ombudsman or assistant ombudsman may occur through voluntary resignation or decertification by the State LTCO or AAA or sponsoring agency which employs him. A person who has been decertified may not be assigned to ombudsman duties.

A. Involuntary Decertification With Cause:

(1) No ombudsman or assistant ombudsman shall be recommended for involuntary decertification without cause. Cause may include:

(a) failure to follow policies and procedures that conform to the LTCO statute and rules;

(b) performing a function not recognized or sanctioned by the LTCO Program;

(c) failure to meet the required qualifications for certification;

(d) failure to meet continuing education requirements;

(e) intentional failure to reveal a conflict of interest; or

(f) misrepresentation of the ombudsman's or assistant ombudsman's category of certification or the duties he is certified to perform.

(2) The State LTCO and AAAs shall establish, for their respective programs, policies and procedures for recommending decertification. Those policies and procedures shall require that the State LTCO or AAA attempt to help the LTCO or Assistant LTCO attain satisfactory job performance through professional development, supervision, or other remedial actions prior to recommending decertification.

(3) AAAs recommending decertification shall state their reasons in writing and shall provide any relevant documentation to support the recommendation to the State LTCO. Notice of the recommendation for decertification and the basis for the recommendation shall be provided to the local ombudsman or assistant ombudsman at the same time that information is submitted to the State LTCO.

(4) The State LTCO shall review the recommendation and provide written notification of his decision to the AAA and the local ombudsman or assistant ombudsman within ten working days. The AAA or local ombudsman or assistant ombudsman may appeal the State LTCO's decision in accordance with the Department of Human Services Rule R497-100.

(5) When the State LTCO initiates a decertification action against a local ombudsman or assistant ombudsman, the State LTCO shall provide written notification to the AAA and the local ombudsman or assistant ombudsman. The AAA or the local ombudsman or assistant ombudsman may appeal the decision in accordance with the Department of Human Services Rule R497-100.

(6) Upon completion of the decertification actions, the State LTCO shall record the actions and results in the central registry.

B. Voluntary Decertification Without Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns due to personal reasons which would not otherwise affect certification, they shall surrender their LTCO identification card to the AAA. The AAA shall notify the State LTCO of the voluntary decertification. The State LTCO shall record the date of voluntary decertification in the central registry.

C. Voluntary Decertification With Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns for reasons which would otherwise warrant involuntary decertification, they shall surrender their LTCO identification card to the AAA within seven days. The AAA shall notify the State LTCO of the voluntary decertification with cause and shall notify the local ombudsman or assistant ombudsman of the right to a hearing. The State LTCO shall record the date of voluntary decertification in the central registry.

D. Recertification:

(1) A certified local ombudsman or assistant ombudsman who voluntarily requests decertification may apply to have his certification reinstated when he becomes reemployed or accepted as a LTCO staff or volunteer. Any person seeking recertification shall apply in writing, through the AAA, to the State LTCO. The application shall include the date of the most recent decertification action and a summary of any professional development in or experience with ombudsman skills, long-term care services, problem resolution skills or any related skills the applicant may have received since his decertification.

(2) The State LTCO shall review the application and may require the applicant to receive additional professional development, and take an appropriate examination based upon the length of time since the applicant's most recent certification,

and the experience or professional development the applicant has accumulated in the interim. The State LTCO shall make notify both the AAA and the applicant of the decision within ten working days.

R510-200-8. Operation of the Long-Term Care Ombudsman Program.

A. Intake: The local LTCO Program shall accept and screen referrals from residents, family, facility staff, agency staff and the general community. Ombudsmen and assistant ombudsmen may also serve as the complainant for situations they have personally observed.

(1) If the information indicates that the referral relates to abuse, neglect, or exploitation of a resident, the local LTCO shall refer the complaint to either the local Adult Protective Services (APS) office or local law enforcement. The local LTCO and the APS worker should collaborate on investigating and resolving the complaint whenever possible.

(2) If the information indicates that the referral relates to facilities or operations licensed or certified by the Department of Health Bureau of Medicare/Medicaid Program Certification and Resident Assessment, and the nature of the complaint is other than alleged abuse, neglect or exploitation of a resident, the LTCO shall refer the complaint to the Department of Health. The local LTCO and Department of Health staff should collaborate on investigating and resolving the complaint whenever possible.

(3) Referrals to other agencies shall be made immediately if the situation appears life threatening or, in other situations, within two working days. If a referral is made to another agency, the local LTCO shall complete the intake form, indicating the referral date and entity, and maintain the form as part of the record. The local LTCO shall follow up to see that action was taken by the referral agency.

(4) If the referral involves a resident who is under the age of 60, and the nature of the complaint is limited to impact only on that resident, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section and take no further action. If the referral involves a resident who is under the age of 60 who resides in a facility that has other residents over the age of 60 and the nature of the complaint is such that it impacts those residents, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section as applicable and initiate an investigation.

(5) If the complaint involves residents rights or other issues within the jurisdiction of the LTCO, an investigation shall be initiated to determine if the complaint is valid. Issues within the purview of the LTCO include issues of privacy, confidentiality of information, and other issues relating to the action, inaction, or decisions by providers or representatives of providers of long-term care services, public agencies, or health and human service agencies that may adversely affect the health, safety, welfare, or rights of residents.

B. Investigations:

(1) LTCO investigations shall be initiated within three working days. If the available information indicates serious threat to a resident's life, health or property, the response shall be immediate.

(2) The investigation may involve phone or in-person contacts with the resident and complainant, collateral agency or individual contacts or an on-site investigation. The local LTCO shall:

(a) do a preliminary screening to gather facts and details of the complaint;

(b) categorize the complaint, i.e. resident rights, education, abuse, neglect, technical assistance, etc.;

(c) identify all parties to the complaint;

(d) identify relevant agencies, as required by state and federal statutes;

(e) identify steps already taken by the complainant;

(f) identify information gaps that may require additional research;

(g) determine if an on-site investigation is needed. If it is determined that an on-site investigation is not necessary, the LTCO shall document the reasons in the case file;

(h) determine if the situation is an emergency; and

(i) make verbal or written follow-up with the complainant.

(3) The method and extent of the investigation depends on the circumstances reported. The local LTCO shall complete an intake form on each referral. A complaint consists of the initial referral or any additional contacts regarding the initial referral received during the period that the case is opened. A referral regarding a different matter made during the period the case is opened is considered a new complaint. A referral received after a case is closed is considered a new complaint.

(4) When an on-site investigation is determined to be necessary the local LTCO does not have to give prior notice to the agency or facility in question. The local LTCO may choose to give notice if deemed appropriate. In either case, the ombudsman shall:

(a) upon arrival at the facility or agency, present official identification to the administration or designated person in charge;

(b) identify any factors that may interfere with the investigation;

(c) start the investigatory process to establish as clearly as possible what has happened, why it has happened, who or what is responsible for resolving the complaint, and possible solutions to the problem;

(d) interview the resident, as well as other residents, staff, family, friends and physician as deemed necessary;

(e) make phone calls, on-site observation, review resident records, and make collateral contacts with other agencies and professionals; and

(f) take any other appropriate investigatory actions within the purview of the LTCO Program.

(g) During the course of the investigation, the local LTCO shall look for credible evidence which supports or refutes the complaint. Evidence may be directly observed by the LTCO or indirectly gathered from statements from reliable sources. The State LTCO shall provide consultation and technical assistance regarding the methods used in investigating complaints as requested by the local LTCO.

(h) Ombudsmen shall be provided privacy by the facility or agency during all aspects of the investigative process.

(5) Determining Validity of Complaint

(a) The local LTCO, having gathered evidence regarding the complaint, shall review the evidence to determine whether that evidence supports the allegations made in the complaint. If the local LTCO is uncertain as to whether the complaint is valid, he shall discuss the situation with his supervisor. If further consultation is necessary, contact should be made with the State LTCO, who may suggest additional activities or approaches to the problem. The local LTCO shall gather further evidence from interviews, collateral contacts, and records review, until the body of evidence enables the local LTCO to make a supportable decision regarding validity of the complaint.

(b) Upon determination of the validity of the complaint, the local LTCO shall document the determination and reasons for it in the case file.

(6) Resolution of Complaints

(a) Having determined that the complaint is valid, the local LTCO shall take appropriate steps to resolve the complaint, including:

(i) determining the scope of the problem. Does the problem affect just the residents mentioned in the complaint, or does it affect other residents?

(ii) determining what options exist to resolve the

complaint. For example, can the complaint be resolved immediately, will the resolution require negotiation with the facility management, or has the facility already moved to resolve the situation.

(iii) discussing with the resident which of the options are acceptable to resolve the complaint. Determining an acceptable resolution may require negotiation between the parties to achieve an acceptable resolution to the situation.

(iv) developing with the resident and facility a plan to achieve the agreed-upon resolution. The plan may be very simple or may have several steps and involve other agencies. Once the plan is agreed upon, the local LTCO, facility, resident, and other parties shall take action to implement the plan.

(v) making referrals to other agencies if a referrals are required by the plan.

(a) If during the investigation process the local LTCO determines that the incident or activities should be referred to APS, Health Facility Licensure, or Health Facility Review, the LTCO shall immediately make the referral and involve all appropriate agencies.

(b) The local LTCO who has referred the complaint to another agency shall follow up to obtain final results and record the outcome of the other agency's investigation. If the other agency does not respond or if the response is inadequate, the local LTCO may:

(1) contact the agency; or

(2) contact the State LTCO for technical assistance or help in resolving the problem with the other agency; or

(3) collaborate with another advocacy agency, such as the Legal Center for People with Disabilities, the Senior Citizens Law Center, or the local office of Utah Legal Services to resolve the issue and clarify substantive legal rights of elderly residents; or

(4) track on-going problems with an agency or facility to build a body of credible evidence on which to base further action; or

(5) take any other appropriate action within the LTCO scope of authority, including filing legal action against the other agency if the AAA has the legal resources to bring legal action.

(6) compiling documentation of the validity of the complaint, of the agreed-upon outcome, and the steps taken to carry out the plan. The documentation may be summary in nature, but should clearly indicate the situation and its resolution.

(7) determining at what point the case is appropriately closed.

(8) notifying the complainant, verbally or in writing, that the investigation has been completed and the case is closed.

(7) Records

(a) The local LTCO shall maintain a set of records by resident, containing all required forms and relevant documentation, including:

(i) a completed intake form;

(ii) case recording consisting of: the nature of the complaint; validity of complaint and reasons for the determination; plan for resolution; implementation and outcome of plan; and dates and names of any collateral contacts.

(iii) consent forms; and

(iv) copies of any correspondence or written documents pertaining to the complaint, the investigation, the resolution plan, or implementation of the resolution plan.

(b) The local LTCO shall also maintain information by facility relating to all referrals.

(c) All actions, findings, conclusions, recommendations and follow-up shall be documented on the required state forms.

(8) Consent Forms

(a) In order to access resident files maintained in a facility, the local LTCO must attempt to obtain a signed release from the resident or the resident's legal representative. Signed releases shall be maintained in the case file and a copy shall be given to the facility or agency for inclusion in the residents record.

(b) If the local LTCO is unable to obtain written permission, he may get verbal approval from the resident or the resident's legal representative. The date and method of obtaining the verbal approval, e.g. phone contact with guardian, shall be documented in the case file. LTCO shall attempt to have a third-party witness the verbal consent and document it in the record.

(c) If a request for written or verbal consent is denied by the resident or their legal representative, the local LTCO shall not access the records.

(d) If the request for written or verbal consent is unsuccessful for any reason other than specific denial by the resident or legal representative, the local LTCO may proceed to access the records. The reasons for not obtaining consent shall be documented in the case file.

(9) Access to LTCO Records

(a) Records maintained by the local LTCO shall be available to the LTCO, their supervisor, the LTCO Program Director, the State LTCO, and any duly authorized agent of the AAA or the Division with program oversight responsibility. No other staff shall have access to these records.

(b) Residents have the right to read their LTCO records; however, the name of any complainants shall be withheld.

(c) LTCO records shall be released to other persons if the resident provides written consent. The consent form must be filed in the resident's file.

(d) State and federal auditors may have access to LTCO records as required for administration of the program.

(d) Statistical information and other data regarding the LTCO program which does not identify specific residents or complainants is available for public dissemination.

(10) Reporting Requirements to State LTCO

Local LTCO programs shall report to the State LTCO on the operation of the LTCO program. Reports shall include the data required to complete the State's report to the U.S. Department of Health and Human Services, Administration on Aging. Reports shall be submitted within time frames and in a format which shall be mutually agreed upon by the Division and AAAs.

(11) Legal Issues

(a) Legal representation: The Division is responsible for assuring that adequate legal representation is available for local LTCO Programs. AAAs and their governing authorities shall have the option to provide legal representation for their local LTCO Program. If an AAA, through their governing authority, opts not to provide this representation, the Division shall arrange for the representation through the attorney general or through contract. All AAA requests for legal consultation or representation shall be directed to the State LTCO for action. The Division is responsible to assure that no conflict of interest is present in the provision of legal representation to local LTCO Programs.

(b) Liability: The local LTCO must operate within the scope of the ombudsman job description and this policy. Actions such as transporting a client, acting as a guardian or payee, signing consent forms for survey, medication, restraints, etc., signing medical directives, receiving a client power of attorney, and similar actions are outside the scope of the LTCO responsibilities. In doubtful situations the ombudsman should consult with supervisors, legal counsel or the State LTCO.

(c) Guardianship:If a resident has a legal guardian, the local LTCO must work with the guardian. If the local LTCO identifies problems in the guardianship, they will discuss the situation with the local adult protective services staff to determine the advisability of investigating for abuse, neglect, or exploitation. They may also consult legal counsel or present issues to the court which oversees the guardianship.

(12) Volunteers

Local LTCO programs which use volunteers shall follow AAA policy with respect to applications, screening and approval, reference checks, personnel records, reimbursement, supervision, liability and all other relevant aspects of the volunteer program. In addition, volunteers must meet specific training and certification requirements contained in these rules if they are serving in the capacity of local ombudsman or assistant ombudsman.

(13) Public Education

In addition to receiving and investigating complaints, local LTCO Programs are mandated by federal and state statute to provide public education regarding long-term care issues. This may include activities such as frequent presence in facilities, community advocacy, attendance at family or resident councils, technical assistance and in service to long-term care facilities, community organizations, and public information presentations.

R510-200-9. Determination of the Responsible Agency for Investigating Particular Cases in Long-Term Care Facilities.

A. Pursuant to Utah Code Section 62A-3-106.5, to avoid duplication in responding to a report of alleged abuse, neglect, or financial exploitation in a long-term care facility, the Division hereby establishes procedures to determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case and determine whether, and under what circumstances, the agency that is not the responsible agency will provide assistance to the responsible agency in a particular case.

B. The Long-Term Care Ombudsman Program will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of an elderly adult who resides in a long-term care facility in the following cases:

(1) When an allegation of abuse, neglect or exploitation occurs, the Long-Term Care Ombudsman will be the responsible agency in cases other than cases that allege sexual abuse or sexual exploitation;

(2) When an elderly resident of a long-term care facility has allegedly abused, neglected, or financially exploited another resident;

(3) When an employee of a long-term care facility has allegedly abused, neglected, or financially exploited an elderly resident and the facility has terminated the employee;

(4) When the police or local law enforcement have initiated an investigation of alleged abuse, neglect, or financial exploitation.

C. Adult Protective Services will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility in the following cases:

(1) When an allegation of sexual abuse or sexual exploitation of a vulnerable adult is received.

D. The agency that is not the responsible agency will provide assistance to the responsible agency in the following circumstances:

(1) When the responsible agency requests the assistance of the non-responsible agency; or

(2) When the responsible agency is the LTCO and there is evidence that the resident's protective need has not been met.

KEY: elderly, ombudsman, LTCO
October 23, 2006 62A-3-201 to 8
Notice of Continuation August 21, 2007 62A-3-104

R510. Human Services, Aging and Adult Services.
R510-302. Adult Protective Services.
R510-302-1. Authority and Purpose.

(1) This rule is promulgated in accordance with the provisions of Section 62A-3-301, et seq. This purpose is to define services provided by the Adult Protective Services Unit in the Division of Aging and Adult Services, which may be provided to eligible clients.

(2) Definitions:

(a) "Abuse", "neglect" or "exploitation" as defined in Section 62A-3-301, et seq.

(b) "Adult Day Care" means providing daily care and supervision designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting which allows for the maximum functioning of vulnerable adults.

(c) "Adult Foster Care" means the provision of family-based care for vulnerable adults who are unable to live independently.

(d) "Family Support" means the provision of services or payments to increase the capabilities of families to care for vulnerable adults in the natural home setting.

(e) "Adult Protective Services" means the unit within the Division of Aging and Adult Services within the Department of Human Services responsible to investigate abuse, neglect and exploitation of vulnerable adults and provide appropriate protective services.

(f) "Protective Payee" means a person who is eligible for adult protective services, is having difficulty managing their own funds, and voluntarily requests assistance in managing those funds.

(g) "Protective Supervision" means the provision of services to assist a vulnerable adult to remain in a safe community setting through coordination with concerned agencies, families, or individuals, and may include such services as short-term counseling, assistance in money management, and crisis intervention.

h. "Short-Term Services" means limited protective services provided with the permission of the affected vulnerable adult or the guardian of the vulnerable adult, as outlined in a service agreement for the purpose of resolving a protective need found during an APS investigation. Services provided under Short-Term Services may include protective supervision, adult day care, adult foster care, or family support.

i. "Vulnerable Adult" as defined in 62A-3-301.

(3) Procedure, Services and Assistance:

(a) Pursuant to Section 62A-3-301, et seq., this rule establishes the procedure by which the Division of Aging and Adult Services will operate the Adult Protective Services Program as authorized by law.

(b) Adult Protective Services shall receive calls from any person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect or exploitation.

(c) Adult Protective Services' aid and assistance is available, on a voluntary basis, to all eligible vulnerable adults who are being or have been abused, neglected, or exploited, but shall be limited to the availability of budgetary resources being sufficiently allocated to Adult Protective Services. Vulnerable adults whose income and assets exceed the Adult Protective Services income guidelines, may be assessed a fee by the Division for services based on the Adult Protective Services Payment Schedule established by the Division, pursuant to Section 62A-3-316(1).

(d) Adult Protective Services shall, throughits intake system via telephone communication, receive calls which are intended to enlist Adult Protective Services to provide a vulnerable adult with protection from abuse, neglect, or exploitation. Adult Protective Services may be accessed for and in behalf of any eligible citizen of the State.

(e) In order for Adult Protective Services to take action, persons who make appropriate referrals shall include the following information:

(i) The approximate age of the vulnerable adult. Note: a vulnerable adult must be 18 years of age, or older, to be eligible.

(ii) A description of the mental and/or physical impairment which substantially affects the person's ability to do one or more of the following: provide personal protection or necessities, obtain services, carry out activities of daily living, manage one's own resources, or comprehend the nature and consequences of remaining in a situation of abuse, neglect or exploitation. (62A-3-301(26)).

(iii) A statement of a specific allegation of abuse, neglect or exploitation being perpetrated or inflicted upon the victim.

(f) Adult Protective Services shall make a record of each report received. Adult Protective Services shall then evaluate each report for possible follow-up and investigation. Some reports may not be accepted for investigation if the vulnerable adult is not currently at risk of abuse, neglect, or exploitation.

(g) Adult Protective Services investigations will be conducted on all screened and accepted referrals. Under normal conditions, investigations will begin within three working days of receipt of the referral. Investigations will be completed within 60 days unless a case extension policy exception has been obtained.

(h) To obtain a case extension policy exception:

(i) The caseworker shall, with or without being requested by the client, submit a Policy Exception form to the Supervisor for approval.

(ii) The form shall document the reasons for the case extension request, and how the extension will assist in protecting the client.

(i) Eligible Adult Protective Services clients may receive emergency placements in a safe environment until a resolution of the immediate problem/crisis can be made.

(j) Private homes used as emergency shelter homes must meet the same standards as Adult Foster Care providers. Facilities used as emergency shelter placements shall be either certified or licensed as a residential facility or have a current business license.

(k) If the protective need identified during an investigation cannot be resolved by the investigation due date, the investigator may request a Short-Term Services Review Committee meeting for consultation, recommendations, and approval to continue efforts to resolve the protective need under the Short-Term Services Program. After closure of an investigation, no services can be provided without approval from the committee for Short-Term Services. That review committee may approve short-term services in 90-day increments, with subsequent reviews as needed to continue the service. Nevertheless, the vulnerable adult receiving these services, or the vulnerable adult's guardian or conservator, must voluntarily consent to and accept the services. If consent is withdrawn by the vulnerable adult, or the vulnerable adult's guardian or conservator, the services will cease unless a court order is obtained for such services to continue.

(l) Eligible Adult Protective Services clients may receive Protective Payee services to assure that basic living needs are being met and money management skills are being learned at a level appropriate to the client's level of functioning. Protective payee services may be provided to clients who:

(i) Have a physical or mental impairment which directly relates to the need for payee services, and are assessed by the worker to be incapable of handling their own funds.

(ii) Have no other appropriate person or institution to assume payee responsibility.

(iii) Are capable of consenting to the obtaining of services, and are then able to accept the services. Note: If consent is

withdrawn, the payee services will cease unless court ordered.

(iv) Do not reside in a health care facility as defined in Section 26-21-2, residential treatment program, or other facility that is capable of providing payee services. Have an income which falls within the Adult Services income guidelines. The Client may be assessed a fee for services based on the Adult Protective Services Payment Schedule.

(m) Eligible Adult Protective Services clients, or the service provider, may receive an immediate payment of funds in emergency situations. These funds will be issued through an Over-the-Counter-Check, or a one-time payment to the service provider. These funds may be issued for such purposes as shelter, food, clothing, medicine or other emergencies which are needed immediately and cannot be funded from any other source. The worker is authorized to request that an agreement-for-repayment of the funds document be signed by the client, if appropriate.

(n) Eligible Adult Protective Services clients may receive Adult Day Care to assist them in improving their ability to personally function and provide self-care. Adult Day Care may also be provided as respite for eligible caregivers. Clients may qualify for Adult Day Care if they require one or more of the following:

(i) Assistance with activities of daily living.

(ii) 24-hour supervision.

(iii) Assistance due to significant loss of memory or cognitive function.

(iv) Assistance due to developmental disabilities.

(v) Assistance in overcoming isolation related to their disability or to support the transition from independent living to group care or vice versa.

(vi) Assistance to prevent premature institutionalization.

(o) Eligible Adult Protective Services clients may receive Adult Foster Care to enable them to remain in a community setting and prevent premature institutionalization. Individuals who are unable to live alone or whose mental, emotional and physical conditions are such that the care given by a foster care provider will meet the person's needs may be appropriate for adult foster care. Individuals with the following medical, mental and behavioral problems will not be normally considered appropriate for Adult Foster Care assistance:

(i) Require medication which they are unable to manage and administer themselves.

(ii) Are considered by the Adult Protective Services to be a danger to themselves or others.

(iii) Are incontinent, unless they are capable of self care.

(iv) Are bedridden or confined to wheelchairs without having sufficient transfer skills from the wheelchair.

(v) Have mental or neurological problems requiring professional supervision and treatment.

(vi) Require constant assistance with toileting, dressing, grooming, hygiene or bathing.

(vii) Exhibit destructive verbal and behavioral problems under normal living conditions.

(viii) Require supervision at night time due to wandering or agitated behavior.

(p) Adult Foster Care services will only be provided in homes which are licensed in accordance with State standards.

(q) Eligible Adult Protective Services clients may receive Family Support payments to increase the capabilities of families to care for them in the natural home setting when no other services are available. These services are intended to help maintain the individual in a family member's home and prevent premature institutionalization. Vulnerable adult clients are eligible for this service when:

(i) The client is unable to live unassisted due to mental, emotional and physical conditions and requires assistance or care in order to be able to safely remain in the community.

(ii) A physician's statement indicates that the vulnerable adult is able to remain in his own home or the home of a relative and would benefit from Family Support Services.

(iii) The vulnerable adult meets income eligibility guidelines established by the Division.

(r) Adult Protective Services may petition the courts for legal authority to intervene when it has determined that the vulnerable adult cannot be protected in any less restrictive manner and there is evidence that the vulnerable adult lacks the capacity to consent to services.

(s) Services provided by Adult Protective Services will be terminated when:

(i) The circumstances which directly or indirectly caused, or were primary reasons for the abuse, neglect or exploitation, no longer exist; and the vulnerable adult is protected, or

(ii) The vulnerable adult receiving voluntary services requests that those services be terminated.

KEY: vulnerable adults, domestic violence, shelter care facilities, short-term services
November 18, 2002 62A-3-301 et seq.
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-400. Home and Community-Based Alternatives Services Policy and Procedures.
R510-400-1. Authority and Purpose.

(1) Authority.

Home and Community-Based Alternatives Services are provided by Section 62A-3-104 and the Older Americans Act, Title III B and Title III D. The Utah State Department of Human Services is the umbrella agency with oversight responsibility for the Division of Aging and Adult Services. Home and Community-Based Alternatives Services are funded from several sources and administered by the Division of Aging and Adult Services.

(2) Purpose.

(a) Home and Community-Based Alternatives Services provide a comprehensive array of quality client-centered services. The services are delivered in a variety of community settings designed to provide a choice of service delivery options to the client who can continue to live in his own home, if his needs for social and medical services can be met. Home and Community-Based Alternatives Services contribute to improving the quality of life and help to preserve the independence and dignity of the recipient.

(b) The objective of the Older Americans Act Title III B and III D Services is to provide services to the frail older client, including the older client who is a victim of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and to his family.

R510-400-2. Definitions.

(1) Adult means an individual who is 18 years of age or older.

(2) Aging and Aged means an individual who is 60 years of age or older.

(3) Agency means the designated Area Agency on Aging or other subcontracting agency which may be selected by the Division, if the designated Area Agency on Aging declines to be a contractor or has been determined to be out of compliance with the contract.

(4) Assessment means a complete review of an individual's current functional strengths and deficits, living environment, social resources and care giving needs.

(5) Caregiver means an individual who has the primary responsibility of providing care and/or supervision to an adult, three or more times a week.

(6) Care Plan means a written plan which contains a description of the needs of the client, the services necessary to meet those needs, and the goals to be achieved.

(7) Case Management means assessment, reassessment, determination of eligibility, development of a care plan, ongoing documentation, arranging client-specific services, case recording, client monitoring and follow-up.

8. DAAS Approved Assessment Instrument means a document that meets minimum assessment criteria, as determined by DAAS, for documenting the needs of individuals.

(9) Department means the Utah State Department of Human Services.

(10) Director means the Director of the Agency.

(11) Division means the Utah State Division of Aging and Adult Services.

(12) Emergency means that a disabled adult is at risk of death or immediate and serious harm to self or others, as provided by Section 62A-3-301(6)(12).

(13) Equipment, Rent or Purchase means rental or purchase of equipment deemed necessary for the client's care.

(14) Home means an individual's place of residence.

(15) Home Health Aide means basic assistance and health maintenance by an Aide to individuals in a home setting under the supervision of appropriate health care professionals.

(16) Homemaker means services which provide assistance in maintaining the client's home environment and home management.

(17) Housekeeping Services means assistance with vacuuming, laundry, dish washing, dusting, cleaning bathroom, changing bed linen (unoccupied bed), cleaning stove and refrigerator, ironing, and garbage disposal which relate to the client's well being.

(18) Home and Community-Based Alternatives Services means a comprehensive array of services that are provided to an individual, which enable him to increase self-sufficiency and to maintain his functional independence.

(19) Protective Services means services provided by the Division, including the services of guardian and conservator provided in accordance with Title 75, Utah Uniform Probate Code, to assist persons in need of protection to prevent or discontinue abuse, neglect, or exploitation until that condition no longer requires intervention. The services shall be consistent, if at all possible, with the accustomed lifestyle of the disabled adult, as provided by Section 62A-3-301(12).

(20) Personal Care means assistance with activities of daily living in a home setting, to an individual who is unable to care for himself or when the caretaker is temporarily absent or requires respite.

(21) Respite means a rest or relief for the primary Caregiver from care giving burdens and responsibilities, to maintain the Caregiver as the primary person delivering care giving activities.

(22) Risk Score means a score that reflects the amount of risk an individual has of premature institutionalization. Risk is determined using a DAAS approved assessment instrument that reflects a moderate to high degree of functional, environmental, social resource and care giving needs by an individual.

(23) Screening Assessment means an instrument that initially determines if an individual has a degree of functional limitation that may potentially deem him eligible for Home and Community-Based Alternatives Services.

(24) Voluntary Contributions means a voluntary donation of money that a client or the family pays and may be in addition to an assessed fee for service.

R510-400-3. Funding Source.

(1) Home and Community-Based Alternatives Services are funded by a variety of Federal, State and local community dollars, program fees, voluntary and public contributions.

(2) The Older Americans Act Title III B and III D Services are funded by Federal dollars allocated by Congress, State matching funds, local matching funds and voluntary contributions.

R510-400-4. Eligibility.

(1) Services may be provided as funds permit to eligible adults as determined by DAAS Policy and Procedures for Home and Community-Based Alternatives Services.

(2) Older Americans Act Title III B and III D Services may be provided to eligible Aging and Aged Adults, as specified under Section 321, 341 and 342 of the Older Americans Act, 1965 as amended.

R510-400-5. Authorized Services.

The Agency may provide or provide for an array of home and community-Based alternatives services, determined by assessment to be essential to maintain the individual's independence in order for him to remain at home. These services may include case management, homemaker, personal care, home health assistance, skilled health care, respite, equipment rental or purchase, emergency response systems or other services as needed.

R510-400-6. Fees and Voluntary Contributions.

(1) Fees shall be assessed for all clients receiving Home and Community-Based Alternatives Services. Fees are based on the client's and spouse's adjusted income as determined by the DAAS Eligibility Declaration Form and calculated against the Department's Fee Schedule.

(2) Older Americans Act Title III B and III D Services participants shall not be assessed fees for receiving Older Americans Act Title III B and Title III D funded services, as specified under Section 321, 341 and 342 of the Older Americans Act, 1965 as amended.

R510-400-7. Service Provider Requirements.

Home and Community-Based Alternatives Services shall be provided through a public agency or a private licensed Service Provider Agency with at least one year experience in providing home support or home health services.

R510-400-8. Client Vouchers.

The agency shall develop policy and procedures for the provision of a voucher system of payment that may be available to the client who is able to manage the provision of services specified in his care plan. Such policy and procedures shall be developed in accordance to guidelines found in the Division's Home and Community-Based Alternatives Services Procedure Manual.

R510-400-9. Client Assessment.

The initiation of a DAAS approved Screening Assessment to establish a risk score shall be ten working days or less from the initial referral. Enough information shall be gathered with the client, family or referral source to determine potential eligibility and whether he shall be referred for an Assessment or referred to another agency or community resource.

R510-400-10. Care Planning.

The client's Care Plan shall be developed based upon his current situation and needs as identified by the DAAS approved assessment instrument.

R510-400-11. Payment to Relatives.

The Agency shall develop policy and procedures for the provision of direct payments to a relative of the eligible client for care giving services that comply with the Health Care Assistant Registration Act as found in Section 58-62-101 and DAAS Policy and Procedures for Home and Community-Based Alternatives Services as found in Utah Administrative Code R 510-400.

R510-400-12. Case Management.

Case Management shall be provided to all recipients of Home and Community-Based Alternatives Services.

R510-400-13. Record Keeping.

The recipient of Home and Community-Based Alternatives Services shall have an individual case file that includes client eligibility, assessment of the client's needs, care plan, quarterly reviews, progress notes, and when applicable, legal documents addressing guardianship, advanced directives or powers of attorney.

R510-400-14. Client Rights and Responsibilities.

The Agency shall have the responsibility to develop a method to inform all eligible clients of their rights and responsibilities. This shall be evidenced by a signed Client's Rights and Responsibilities Form in the case file.

R510-400-15. Grievance Procedures.

The Agency shall have the responsibility to develop procedures for Client Grievance and Fair Hearing.

R510-400-16. Waiting Lists.

The Agency shall maintain an active waiting list when funding dictates that services cannot be provided for all who have been identified as needing services.

R510-400-17. Termination of Service.

The Agency shall allow for the interruption, transfer and termination of services for the client receiving Home and Community-Based Alternatives Services or Older Americans Act Title III B and III D Services, whose needs, Agency Provider, circumstances or condition warrants.

R510-400-18. Purchase and Rental of Equipment.

(1) Equipment may be purchased or rented if it is deemed necessary for the client's care, providing no other funding source is available.

(2) Purchased equipment is the property of the Agency. The Agency will develop policy and procedures that address the disposition, inventory and repair of equipment.

R510-400-19. Contract Compliance.

The Division is responsible for monitoring Home and Community-Based Alternatives Services and Older Americans Act Title III B and III D Services. Each Agency shall be monitored annually.

R510-400-20. Emergency Interim Service.

Home and Community-Based Alternatives Services may be provided to the client when circumstances warrant the emergency provision of service.

KEY: elderly, home care services, long-term care alternatives
December 17, 1996 62A-3-101 through 62A-3-312
Notice of Continuation August 21, 2007

R512. Human Services, Child and Family Services.
R512-1. Description of Division Services, Eligibility, and Service Access.
R512-1-1. Introduction.

A. Pursuant to Sections 62A-4a-103 and 62A-4a-105, the Division of Child and Family Services (DCFS) is authorized to provide programs and services which support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and which advocate and defend family values established by public policy and advocacy and education.

B. Child Welfare Services shall be made available for children who are abused, neglected, exploited, abandoned; for those whose parents are unable to care for them; and for the assisting of youth who are ungovernable or who are runaways. Spouse abuse services shall be made available to assist victims who have been abused or threatened by their partners.

C. The Division shall provide protective services, services given in the family home, short-term temporary shelter care services, and out-of-home placement and adoption services. The "Best Interest of the Child" shall be the guiding principle used in making decisions for those served by the Division.

D. The programs administered by the Division of Child and Family Services have been established to help children remain with their families, to solve any appropriate problem in their homes, and, if that is not possible, to place them in substitute care for as short a time as possible. When the Division finds that return of a child to the family will never be possible, adoption or guardianship shall be sought to insure a permanent family for the child. The Spouse Abuse services shall provide comprehensive assistance to victims of abuse, their dependent children, and in some cases, to the abusive spouse or partner so that families can be restored to harmony or helped to develop new, more productive ways of life.

E. The Division shall provide its services through local offices situated throughout the state. These offices are listed in telephone directories under Utah State Department of Human Services, Division of Child and Family Services.

F. The State Division of Child and Family Services located in Salt Lake City shall operate as the central office to administer Child Welfare programs, which include: (1) program planning, (2) policy development, (3) training and consultation, (4) program financing, (5) administration of the Interstate Compact on Placement of Children and the Interstate Compact on Adoption and Medical Assistance, (6) legislative and federal liaison, and (7) information and referral.

R512-1-2. Prevention Services.

The Division will either provide for, or contract for, any of several child abuse and neglect prevention services. Most prevention services shall be provided and funded according to the requirements of Section 62A-4a-309, known as the Children's Trust Account legislation.

R512-1-3. Intervention Services.

A. Protective Services. Child abuse and neglect investigation and services shall be provided to eligible clients. All referrals received alleging child abuse and neglect will be investigated in accordance with the provisions of Section 62A-4a-409. The Division will determine whether or not a child has been abused or neglected, or is in danger thereof, and shall take necessary action to protect the child from potential danger. Temporary care of children in shelter homes may be provided when children cannot be returned home due to the likelihood of further abuse or neglect. The parents of a child in shelter care will be kept informed of the child's health and safety and will be involved in developing plans for themselves and their child. If parents desire to visit their child in shelter care, shelter staff will arrange, as appropriate, visits with the child at the location designated by shelter staff but not at the shelter home. Assessment and treatment services will be provided to victims of child sexual abuse and their families.

1. Access. Investigations will be conducted using all appropriate referrals of alleged child abuse or neglect.

2. Eligibility. A report of occurrence of child abuse or that a child is at risk thereof will constitute sufficient eligibility.

B. Youth Services. Short-term crisis counseling services and shelter to runaway, homeless, and ungovernable youth and their families, may be provided in order to stabilize the family.

1. Access. Any youth, family, or other agency can access services defined in this rule, as long as the child is determined to be homeless, or ungovernable, or a runaway.

2. Eligibility. Youth who are either homeless, ungovernable, or who have run away shall be eligible.

R512-1-4. Home-Based Services.

A. Services. The Division shall offer services to families whose children are in their own homes, yet who are at a risk of or who have suffered from abuse or neglect. Services will be voluntary or court ordered, and shall be intensive to avoid unnecessary placement of children in substitute care. These services shall include, but not be limited to: (1) homemaker, (2) child day care, (3) day treatment for preschool children, (4) treatment for children who have been sexually abused, (5) protective supervision, and (6) family preservation services.

1. Access. Only families referred by DCFS staff shall be provided these services.

2. Eligibility. A family must be determined to be in a state of crisis and children shall be at risk of abuse or neglect. Clients receiving treatment for preschool children and sexual abuse treatment may be required to pay a fee based on the family's ability to pay. Fees shall be calculated as a percentage of family income up to the total cost of the service. Clients receiving child care as a protective service shall not be assessed a fee; however, if the family is receiving child care and paying a fee prior to protective services, they will continue to pay day care fees.

B. Custody Studies. Upon an order of the District Court, the Division may engage in and complete child custody studies.

1. Access. Access shall be authorized by receipt of a District Court Order.

2. Eligibility. A District Court Order will provide eligibility. The parties to the action shall be assessed a fee based upon income. Fees shall be determined from the Department fee schedule #1 for low income families. A separate fee schedule shall provide for parents to pay up to the total cost of the study based upon income for families above 150% of the median income.

C. Family Violence. For victims of family violence and their minor children, shelter care facilities may be provided in order to protect the victim and the children from further violence. Short-term counseling may be provided to the family while in shelter, and treatment services shall be offered to the perpetrator of the abuse in order to stop the violence and maintain the family as a unit. Children of abused spouses eligible for Domestic Violence services may receive child care without a fee as part of the protective services provided to the family.

1. Access. The victim of family violence shall have access to the services listed above by requesting protection or by referral.

2. Eligibility. The only eligibility factor is that the victim shall have been abused by the spouse or some other member of the family. The perpetrator may be assessed, through court order, for the costs of the Division's providing these services.

R512-1-5. Out-of-Home Care Services.

A. The following definitions apply to this section:

1. Cohabiting means residing with another person and being involved in a sexual relationship.

2. Involved in a sexual relationship means any sexual activity and conduct between persons.

3. Residing means living in the same household on an uninterrupted or an intermittent basis.

B. Foster Care and Group Care. Child placement services may be provided when parents are unable to meet their children's needs within the family. The Division has authority to place a child when the state has been granted custody through a court order, or when a voluntary agreement has been signed by the parents, or when the child is from another state and is covered by the Interstate Compact for the Placement of Children. The intent of foster or group care is to insure a permanent home for each child. This may be achieved through a return to the home, or through adoption, emancipation, guardianship, or permanent foster care services. A Permanency Plan for each foster child, defining the goal and steps to be taken to achieve permanency, shall be formulated. Periodic reviews shall be held at least once every six months to assess progress achieved within the Permanency Plan, and to project a likely date for returning the youth to the family home or to another permanent home arrangement. A dispositional hearing shall be held every 18 months from date of placement to determine the future status of the child. Foster care shall be provided in licensed family homes. A foster parent or foster parents must complete a declaration of compliance with Section 78-30-9(3)(a and b)that they are not cohabiting with another person in a sexual relationship. Beginning May 1, 2000, the division gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the Region Director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in the divisions' custody may be foster parents pursuant to Section 78-3a-307(5). Group care shall be provided in licensed facilities which offer a more structured treatment environment than a family home. Foster homes are licensed in accordance with R501-12. Residential Treatment Programs, also known as group homes, are licensed in accordance with R501-2 and R501-3-3.

1. Access. Referrals can be made from Protective Services or from Juvenile Court and other agencies. Parents can request placement services by contacting the local DFS Office. Referrals for foster or group care may be screened to determine whether placement is the best option. In most cases, services which are intended to prevent placement must be first provided, before foster or group care will be considered by the Division.

2. Eligibility. Temporary child custody must be given to the State by court order, or by voluntary agreement, and most parents shall be obligated to pay support while their child is in foster care. Youth can be served in foster or group care until age 18, or until age 21 when ordered by the court.

C. Independent Living. Services may be given to older teenage foster children to teach self-sufficiency skills in order to increase their ability to be self-reliant in the future. Some who do not return to living with their parents upon leaving foster care will be allowed to live on their own. All foster children age 16 and older shall be required to be working toward at least one objective in developing independent living skills in their Permanency Plans.

1. Access. Access shall be given only by a referral from the foster care worker.

2. Eligibility. Foster children who are at least 16 years old and who are in custody of the State shall be eligible.

D. Adoption. This service provides adoptive homes for children in custody of the State who are legally available because the birth parents have been permanently deprived of parental rights by court action, or who have voluntarily relinquished their children for adoption. The choice of an adoptive home is based on the best interests of the child. When the children placed for adoption are hard to place because of their special needs, a subsidy payment can be approved to enable adoptions by a family needing assistance in caring for the child. Independent adoption home studies shall be completed only by direct order of a District Court.

1. Access. Access is available only by a referral from foster care staff. Adults wishing to adopt a child may apply to their local DCFS Office for consideration. Receipt of applications can be suspended by a local office based on the number of approved homes waiting for a placement and the number of children available.

2. Eligibility. To be eligible, the child must be in custody of the State, be legally freed for adoption, and the Division must determine that adoption is the best Permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval. Application and placement fees may be charged, or may be waived for families adopting a hard- to-place child. Fees, based on a sliding fee schedule, shall be charged for home studies sent to the U.S. Immigration Service and for completed Independent Adoption Home Studies. Authorization of subsidies for hard-to-place children shall be determined by the Division which shall assess the resources of the adoptive family to meet the child's need for maintenance or treatment.

E. Provider Services. Persons applying to be foster or emergency care parents shall be given information and a home study will be completed. For those approved as meeting program standards, basic training will be provided, as well as any additional training which may be required for some types of care. Annual reapproval is required.

1. Access. Persons interested in becoming foster parents or who wish to provide emergency care, such as shelter care, may apply to their local DCFS Office.

2. Eligibility. Any adult may apply for consideration. Persons approved to be providers must meet certain standards of the Division before approval is granted.

R512-1-6. Collection of Fees.

The regional office staff shall collect any assessed fees for services. Failure of a family to pay the assessed fee may result in the termination of the service and a referral to the Office of Recovery Services for collection. For hardship situations, a fee reduction can be considered by the Director of the Division. An appeal of any decision may be made according to the provisions of R503-5.

R512-1-7. Civil Rights and Due Process.

The Division shall comply with the Department of Human Services policy of Civil Rights. The Division seeks to provide equal opportunity and to insure due process in all actions taken pursuant to these rules. Consumers have the right to be notified about decisions made about their eligibility for any service which is requested and received through the Division of Child and Family Services, and to request a hearing if they disagree with any decision. Notice of a decision shall be sent by the Division when an application for service or a service payment is denied, or if a service is reduced or terminated. Consumers must make a request for any hearings regarding services and decisions specified in this rule in writing.

KEY: social services, child welfare, domestic violence, eligibility*
July 20, 2000 62A-4a-105
Notice of Continuation August 7, 2007

R512. Human Services, Child and Family Services.
R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title I-VE Foster Care, Adoption, and Independent Living.
R512-2-1. Child Welfare/Family Preservation and Support Services.

The Division of Child and Family Services adopts the following federal requirements applicable to Title IV-B, Subparts 1 and 2 for child welfare and family preservation and support services:

A. 42 USC 620, 621, 622, 623, 624, 625, 626, 629, 629a, 629b, 629c, 629d, 629e as amended through January 1, 1997 (accessed through the Internet at http://www.ssa.gov/lawsregs.htm), incorporated by reference; and

B. 45 CFR Parts 1355 and 1357 as updated through October 1, 1996 (accessed through the Internet at http://www.access.gpo.gov), incorporated by reference.

R512-2-2. Title IV-E Foster Care, Adoption, and Independent Living.

The Division of Child and Family Services adopts the following federal requirements applicable to Title IV-E Foster Care, Adoption, and Independent Living:

A. 42 USC 670, 671, 672, 673, 674, 675, 676, 677, and 679, as amended in 1996 (accessed through the Internet at http://www.ssa.gov/lawsregs.htm), incorporated by reference; and

B. 45 CFR Part 1356, as updated through October 1, 1996 (accessed through the Internet at http://www.access.gpo.gov), incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility*
February 1, 1998 62A-4a-105
Notice of Continuation August 7, 2007

R512. Human Services, Child and Family Services.
R512-31. Foster Parent Due Process.
R512-31-1. Due Process Rights.

A. As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a child from a foster home if the foster parent disagrees with the decision, except if the child is being returned to the natural parent.

R512-31-2. Definitions.

A. For the purpose of this rule, the following definitions apply:

1. Emergency foster care means temporary placement of a child in a foster home or shelter.

2. Natural parent means a child's biological or adoptive parent, and includes a child's noncustodial parent.

3. Removal means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-3. Notice to Foster Parents.

A. A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-3.D. The foster parent shall be notified by personal communication and by Notice of Agency Action.

B. The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

C. In addition to requirements specified in Section 63-46b-3, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the foster parent conflict resolution procedure, and notice regarding the ability of the foster parent to petition the juvenile court directly if the child has been in the foster home for 12 months or longer in accordance with Section 78-3a-315.

D. If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-4. Request for Due Process.

A. The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in R512-31-3.D. The request shall be sent to the entity specified in the Notice of Agency Action.

B. If the child was removed as specified in R512-31-3.D, the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

C. Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in R512-31-5.A.1 and R512-31-5.A.2.

R512-31-5. Foster Parent Conflict Resolution Procedure.

A. The Foster Parent Conflict Resolution Procedure consists of the following:

1. A foster parent must first attempt to resolve a conflict with the Division informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

2. The foster parent shall have the opportunity to provide written and oral comments to the Division in an agency conference chaired by the regional director or designee. The agency conference shall include the foster parent, foster care caseworker and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

3. If the foster parent is not satisfied with the results of the agency conference with the Division and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Subsection 62A-4a-206(2)(b)(ii).

R512-31-6. Administrative Hearing.

A. An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with R497-100. The Administrative Law Judge shall determine if the Division has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

B. If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

C. If there is an investigation for child abuse, neglect, or dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-7. Removal of a Foster Child.

A. The foster child shall remain in the foster home until the conflict resolution procedure specified in R512-31-5 is completed, unless the child was removed as specified in R512-31.3.D. The time frame for the conflict resolution procedure shall not exceed 45 days.

B. If the child was removed as specified in R512-31.3.D., the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by Subsection 62A-4a-206(2)(c).

KEY: child welfare, foster care, due process

November 19, 2003	**62A-4a-105**
Notice of Continuation August 7, 2007	**62A-4a-206**
	63-46b-3
	62A-4a-101
	78-3a-315

R512. Human Services, Child and Family Services.
R512-40. Adoptive Home Studies, Recruitment, Approval.
R512-40-2. Guidelines for Persons Applying for Adoptive Placement of Special Needs Child.

Adoptive homes will be approved following the provisions of R501-7-4-3. In addition, the following factors will be considered:

A. Adoptive applicants shall apply in the region where they reside.

B. Both couples and single individuals may be approved as prospective adoptive parents based upon their ability to provide for special needs children.

C. Applicants shall show commitment and stability in existing family relationships which would provide a base for an adoptive child.

D. The evaluation of the home shall include the strengths and weaknesses of the family. Recommendations shall be made as to the age and type of child who can best fit into the home to ensure the healthy development of the child.

E. During the supervision period of school- age child placements, the parent must be at home when the child returns home from school or approved arrangement for supervision must be made.

F. The following factors are critical in the success of adoptive placements and should be factors in approving adoptive applicants: commitment to adoption, ability to sustain long-term relationship, proper motivation and realistic expectations, emotional openness and flexibility, empathy, strong social support system and knowledge of resources, and stable marital relationship.

G. The following factors may significantly contribute to adoption disruption and should be considered in approving adoptive applicants: history of emotional or psychological problem or substance abuse, impulse control disorders, disruptive crisis filled lifestyles, criminal activity, serious problems in child rearing, unrealistic expectations of self and child, and marital difficulties and incompatibilities which seriously compromise the ability to meet the needs of the child.

R512-40-4. Follow-Up Services.

A. A record of the approved home study shall be maintained in the Utah Social Services Delivery System (USSDS).

B. Any significant changes in the family's situation shall be documented by revisions or additions on an annual basis in the adoptive study, including revised medical reports, if needed.

C. At the end of a family's third year, as an approved prospective adoptive home, the agency shall notify the family that their home study will be closed unless the family reapplies for a new home study to be completed.

R512-40-5. Application by Staff of the Division of Child and Family Services (DCFS).

Staff members of DCFS may apply to adopt and may adopt children in State custody in the following manner:

1. The person applies in the region of residence.

2. The home study will be completed by staff of another region on a cooperative basis upon the request of the regional director.

3. Approval of placement of a child in a staff member's home will be by the region having custody of the child. If the prospective adoptive parent is from the same region as the child, the placing committee will consist of the child's worker, outside child welfare specialists, and the State Adoption Specialist. Supervision will be by the placing region, unless the child and prospective parent are from the same region, in which case, another region will provide supervision.

KEY: adoption

1992 **62A-4a-106**
Notice of Continuation August 7, 2007

R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Adoption by Relatives.

A relative who has a relationship with a child available for adoption may apply to adopt a particular child. The application and home study will be handled in accordance with Division of Child and Family Services, Adoption Policy, and in accordance with Title 78, Chapter 30, based upon the best interest of the child.

KEY: adoption

1992	**78-30-1**
Notice of Continuation August 7, 2007	**78-30-1.5**
	78-30-9
	78-3a-307

R527. Human Services, Recovery Services.
R527-257. Enforcing Child Support When the Obligor is Incarcerated.
R527-257-1. Enforcing Child Support When the Obligor is Incarcerated.

1. If at the time of assessment, the obligor is incarcerated in prison, jail, or in a halfway house and has income or assets:

a. If there is no order for support, the office shall establish a support order using the child support guidelines pursuant to Section 78-45-7.

b. If a court order for child support exists, the debt shall accrue as ordered.

2. The Office of Recovery Services caseworker shall review the obligor's circumstances with a Department of Corrections caseworker before taking steps to collect the child support.

KEY: administrative law, child support, halfway houses
1992 78-45-7
Notice of Continuation August 22, 2007 62A-11-320

R527. Human Services, Recovery Services.
R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.
R527-258-1. Non-Collection from Ex-Prisoners in the Half-way Back or Comparable Program.

1. If the obligor is a participant in the Half Way Back or comparable program, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the treatment.

2. The Office of Recovery Services/Child Support Services (ORS/CSS) will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-2. Enforcing Child Support When the Obligor is an Ex-Prisoner.

1. The federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven if he makes both the full monthly current support payment and the full monthly assessed payment toward the past-due support debt for twelve consecutive months. The clock starts for the twelve consecutive month period when: (a) the obligor is employed; or (b) six months after the obligor is released, whichever occurs first.

2. During the first six months of a period of twelve consecutive months, the office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may begin in the seventh month.

b. If the obligor makes the full payment each month for twelve consecutive months, the remaining IV-A support debt owed for the period of incarceration shall be forgiven.

3. The obligor's arrearage payment shall be reassessed by the office if his financial situation changes during the twelve-month period.

R527-258-3. Enforcement of Child Support for Obligors in Treatment Programs.

1. If the obligor is in a licensed mental health or substance abuse treatment program, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the in-patient treatment or up to six months of out-patient treatment.

2. Up to six months of the federal title IV-A past-due support debt which accrued while the obligor was in a treatment program may be forgiven if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The clock starts for the twelve consecutive month period when: (a) the obligor is employed; (b) six months after the obligor is released from the in-patient treatment program; or (c) six months after out-patient treatment begins, whichever occurs first.

KEY: administrative law, child support
May 19, 2004 78-45-7.15
Notice of Continuation August 22, 2007 62A-11-320.1

R527. Human Services, Recovery Services.
R527-330. Posting Priority of Payments Received.
R527-330-1. Posting Priority of Payments Received.

The Office of Recovery Services shall determine to which debt payment will be credited in instances where the obligor has more than one case, and the obligor has not expressed his intention.

For Child Support Services cases, if the obligor expresses intent, the payment shall be credited to the case indicated. When the obligor has not expressed his intention, the Office of Recovery Services/Child Support Services (ORS/CSS) shall pro-rate payments, other than payments received from the Federal tax refund intercept program, among all of the obligor's current support obligations. Once the current support obligations have been met, a payment shall be split equally among all of the obligor's child support cases with arrears.

A payment credited to a case with arrears shall be applied to the oldest debt, and arrears owed to the family shall be paid before arrears owed to the State according to the priority specified in 42 USC Sec. 657.

KEY: child support, debt, public assistance programs
December 16, 1999 62A-11-107
Notice of Continuation August 22, 2007

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Form" means a standard document required by Division rule or other applicable law;

(g) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(h) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(i) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;

(j) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(k) "Region" means one of four geographical areas of the State of Utah referred to as central, eastern, northern or western;

(l) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;

(m) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(n) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(o) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(p) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(q) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(r) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(s) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Mental Retardation or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(9).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to

self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(14) or related conditions.

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered mental retardation or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to mental retardation or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver mental retardation or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver for Individuals with Developmental Disabilities or Mental Retardation.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of

daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver for Individuals with Physical Disabilities.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury;

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with mental retardation or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative

indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver for Individuals with Acquired Brain Injury.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

KEY: human services, disabilities
August 22, 2006 62A-5-103
Notice of Continuation December 18, 2002 62A-5-105

R539. Human Services, Services for People with Disabilities.
R539-9. Supported Employment Pilot Program.
R539-9-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for the Division's pilot program to provide supported employment services for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.1

R539-9-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101, and

(2) "Supported Employment" means "competitive work" in integrated work settings or employment in "integrated work" settings where individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities.

(3) "Competitive Work" means employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(4) "Integrated Work" means job sites where most employees are not disabled, where a client interacts on a regular basis, in the performance of job duties, with employees who are not disabled. If a client is part of a distinct work group of only individuals with disabilities, the work group should consist of no more than eight individuals.

(5) "Extended Services" means on-going support services and other appropriate services, needed to support and maintain an individual with a most significant disability in employment. They are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment. Extended services are based on a determination of the needs of an eligible individual. Extended services may include natural supports, such as volunteers, family members, co-workers, employer, supervisors, students, and PASS or IRWE.

R539-9-3. Eligibility.

(1) A Person who meets the eligibility requirements listed in Section 62A-5-103.1 may participate in the supported employment pilot program provided that:

(2) the Person agrees to enter services under the conditions listed in Section 62A-5-103.1,

(3) the Person agrees not to use any other Home and Community Based Medicaid Waiver service operated by the Division while participating in the Supported Employment Pilot,

(4) if the person has a Medicaid Card the person may continue to access State Plan, E-Pass and other Medicaid services operated separately from the Division during participation in the pilot,

(5) the person agrees to move off the immediate needs waiting list for supported employment,

(6) the person is found eligible for Division of Rehabilitation Services, Supported Employment funding,

(7) the person agrees to use an approved provider,

(8) the person signs the Supported Employment Pilot Participant Agreement and agrees to follow through with instructions from rehabilitation counselors, services for people with disabilities support coordinators and service brokers and private provider staff,

(9) the person has an Office of Education, Rehabilitation Services, Referral and Services Report form 58 completed signed by a rehabilitation counselor and a support coordinator,

(10) the person agrees that the person's need for extended supported employment services will be met solely by the provision of supported employment services for the duration of the pilot program, and

(11) the person agrees to provide information needed by the person's employer to obtain the tax incentive through P.L. 104-188, Federal Welfare to Work, Internal Revenue Service, IRS Form 8850 or Section 59-7-608 or Credit for Employers Who Hire Persons with Disabilities, Form TC-40HD.

R539-9-4. Priority.

(1) First priority will be given to Persons on the waiting list for supported employment services who currently receive Division of Rehabilitation Services funding.

(2) Second priority will be given to Persons on the waiting list for supported employment services and no other services.

(3) Third priority will be given to Persons waiting for supported employment and other services.

KEY: disabilities, supported employment
August 7, 2007 62A-5-103.1

R590. Insurance, Administration.
R590-91. Credit Life Insurance and Credit Accident and Health Insurance.
R590-91-1. Purpose and Authority.

The purpose of this rule is to protect the interests of debtors and the public in this State and to ensure a fair and equitable credit insurance market by establishing a system of reasonable rating, policy form, and operating standards for the transaction of credit life insurance and credit accident and health insurance. This rule is promulgated pursuant to Section 31A-2-201.

R590-91-2. Definitions.

As used in this rule:

A. "Credit Accident and Health Insurance" means insurance as defined in Section 31A-22-802.

B. "Credit Insurance" means both credit life insurance and credit accident and health insurance.

C. "Credit Life Insurance" means insurance as defined in Section 31A-22-802.

D. "Indebtedness" means indebtedness as defined in Section 31A-22-802.

E. "Net Indebtedness" means net indebtedness as defined in Section 31A-22-802.

F. "Net Written Premium" means premium as defined in Section 31A-22-802.

G. "Open-End Credit" means credit extended by a creditor under an agreement in which the creditor reasonably contemplates repeated transactions; the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and the amount of credit available to the debtor is self-replenishing as the debtor repays amounts previously drawn.

R590-91-3. Rights and Treatment of Debtors.

A. Multiple Plans of Insurance. If a creditor makes available to the debtor more than one plan of credit life insurance or more than one plan of credit accident and health insurance, the debtor must be informed of the plans applicable to the specific loan transaction.

B. Substitution. If a creditor requires insurance the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this State. If this subsection is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

C. Evidence of Coverage.

(1) All credit insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance.

(a) The individual policy or certificate of insurance shall be delivered to the debtor in accordance with Section 31A-22-806(3) and 70C-6-104. The insurer shall promptly notify the debtor of any delay in providing the insurance.

(b) If the named insurer does not accept the risk, the insurer, if any, shall notify the debtor of the failure to provide the insurance. A substituted insurer, if any, shall deliver the policy or certificate in accordance with Section 31A-22-806(5).

(c) Subsequent certificates are not needed on open-end credit arrangements after the initial indebtedness.

(2) Each individual policy or certificate of insurance shall provide the information required by Section 31A-22-806.

(3) Each policy application must provide the information required by Section 31A-22-806(4)(b) and identify the agent, if any.

D. Claims Processing. All credit insurance claims shall be processed in accordance with Section 31A-26-302.

E. Termination of Group Credit Insurance Policy.

(1) If a debtor is covered by a group credit insurance policy providing for the payment of single premiums to the insurer, then provisions shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which the single premium has been paid.

(2) If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy, for whatever reason, termination notice shall be given to the insured debtor at least 30 days prior to the effective date of termination, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this paragraph shall be given by the insurer or, at the option of the insurer, by the creditor.

F. Interest on Premium. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on the insurance charges or premiums, the creditor must remit and the insurer shall collect the premium within 60 days after it is added to the indebtedness.

G. Renewal or Refinancing of Indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited promptly to the debtor as provided in Section 8.

H. Maximum Aggregate Provisions. A provision in an individual policy or certificate that sets a maximum limit on total payments must apply only to that individual policy or certificate.

I. Voluntary Prepayment of Indebtedness. If a debtor prepays his indebtedness other than as a result of his death or through a lump sum accident and health payment:

(1) Any credit life insurance covering indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be paid to the debtor in accordance with Section 8; and

(2) Any credit accident and health insurance covering indebtedness shall be terminated and an appropriate refund of the credit accident and health insurance premium shall be paid to the debtor in accordance with Section 8. If a claim under this coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit disability benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

J. Involuntary Prepayment of Indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor if living or to the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

(1) In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit accident and health insurance premium in accordance with Section 8;

(2) In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium in accordance with Section 8;

(3) In either case, the amount of the benefits in excess of the amount required to repay the indebtedness after crediting any unearned interest or finance charges.

K. Amounts to be Insured:

(1) Credit life insurance benefits shall be consistent with the premium charge.

The initial amount of credit life insurance may not exceed the total amount payable under the contract of indebtedness. Credit life insurance may provide benefits in amounts which do not exceed, but may be less than, the scheduled amount of indebtedness, including unearned interest or finance charges, or the actual amount of unpaid indebtedness, whichever is greater. Credit life insurance on preauthorized lines of credit not exceeding the commitment period may be written for the preauthorized amount on a nondecreasing or level term plan. The death benefit amount shall be that amount for which premiums are paid. Whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(2) The total amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, may not exceed, but may be less than the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each periodic indemnity payment may not exceed the total amount payable under the contract of indebtedness divided by the number of periodic installments.

L. Dividends on participating individual policies of credit insurance shall be payable to the individual insureds.

R590-91-4. Policy Forms, Filing and Reserves.

A. Permissible Forms. Credit life insurance and credit accident and health insurance shall be issued only in the forms defined in Section 31A-22-803.

B. Filing Requirements.

(1) All policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders to be delivered or issued for delivery in this State shall be filed with the commissioner as required by Sections 31A-21-201, 31A-22-807, 31A-22-808, and 31A-19a-207.

(2) An actuarial memorandum, signed and dated, must be included in each rate and form filing. The memorandum must identify the following:

(a) types of coverage: gross, net, decreasing, level, single life, joint life, full term or truncated;

(b) types of loans to be insured: open-end, closed end;

(c) durations of the loans and durations of the coverage. Refer to Section 31A-22-801(2)(a);

(d) methods of premium charge: single premium or monthly outstanding balance;

(e) schedules of premium rates and formulas for each type of coverage;

(f) methods of refund calculation and formulas for each type of coverage; and

(g) reserve bases.

All filings are subject to the general filing requirements of the Utah Filing of Life and Disability Forms and Rates Rule R590-86. The commissioner may disapprove a form if the benefits provided are not reasonable in relation to the premium charged.

C. The minimum reserve basis for credit life insurance shall be the 1980 Commissioner's Standard Ordinary Table (1980 CSO) with interest at 5-1/2% per annum.

D. The minimum reserve basis for active lives on credit accident and health insurance shall be the amount of the premium refund available to the insured.

E. The minimum reserve basis for disabled lives on credit accident and health insurance shall be the 1987 Commissioner's Group Disability Table (1987 CGDT) with interest at 5-1/2% per annum.

R590-91-5. Reasonableness of Benefits in Relation to Premium.

A. General Standard. Under Section 31A-22-807, benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is deemed to be satisfied if the premium rate charged develops or may be reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 55% for credit accident and health insurance.

B. Nonstandard Coverage. If any insurer files for approval of any form providing coverage different from that described in Sections 6 and 7, the insurer shall demonstrate to the satisfaction of the commissioner that the premium rates to be charged for the coverage will develop or may be reasonably expected to develop a loss ratio not less than that contemplated for standard coverage at the premium rates described in these sections.

C. Coverage Without Separate Charge. If no specific charge is made to the debtor for credit insurance, the standards of Subsection A above and the deviation standards of Section 11 are not required to be used. For purposes of this subsection, it will be considered that the debtor is charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, or if there is a differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status. Any such charge which exceeds the premium rate standards set out in Sections 6 and 7 as adjusted pursuant to Section 9 must be filed with the commissioner.

R590-91-6. Credit Life Insurance Prima Facie Rates.

A. Premium Rate. Credit life insurance prima facie premium rates for the insured portion of an indebtedness payable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), and (5) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) Outstanding balance: $0.65 per month per $1,000 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis;

(2) Single Premium Decreasing Term: If premiums are payable on a single premium basis, the following formula shall be used to develop single premium rates from the outstanding balance rate:

Sp = (N + 1)/20 (Op) where Sp is the single term premium per $100 of initial insured indebtedness, N is the credit term in months, and Op is the monthly outstanding balance rate per $1,000 of outstanding insured indebtedness.

(3) Single Premium - Level Term: If premiums are payable on a single premium basis when the benefit provided is level term, the following formula shall be used to develop single premium rates from the outstanding balance rate:

Sp = N/10 (Op) where Sp is the single term premium per $100 of initial insured indebtedness, N is the credit term in months, and Op is the monthly outstanding balance rate per $1,000 of outstanding insured indebtedness.

(4) Joint coverage rate on basis (1), (2), or (3) of Subsection A may be no greater than one hundred and seventy percent (170%) of the specific rate for that type of coverage.

(5) A combination of the appropriate rate for level term and the appropriate rate for decreasing term, with equal decrements, shall be used, if coverage provided is a combination

of level term and decreasing term, with equal decrements.

(6) If the benefits provided are other than those described in Subsection A above, rates for these benefits shall be actuarially consistent with the rates provided in Paragraphs (1), (2), and (3).

B. The premium rates in Subsection A shall apply to all policies providing credit life insurance, to be issued either with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No exclusions other than suicide within one year of the incurred indebtedness;

(2) Either no age restrictions or age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors having attained age 66 or over on the maturity date of the indebtedness; and

(3) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

(4) On insurance written in connection with open-end credit plans where the amount of insurance is based on or limited to the outstanding unpaid balance, no provision excluding or denying a claim for death resulting from a preexisting condition except for those conditions for which the insured debtor received medical diagnosis or treatment within six months preceding the effective date of coverage and which caused or substantially contributed to the death of the insured debtor within six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a subsequent advance or increase to the outstanding balance is the date on which the advance or increase is posted to the plan account. Such preexisting condition exclusion shall apply to the initial indebtedness and all subsequent advances on an individual basis, only where evidence of individual insurability has not been required.

R590-91-7. Credit Accident and Health Insurance Prima Facie Rates.

A. Premium Rate. Credit accident and health insurance prima facie premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), (5), and (7) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) If premiums are payable on a single-premium basis for the duration of the coverage, the premiums shall be as indicated on the attached chart which is available from the Insurance Department.

(2) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the following formula, or according to a formula approved by the commissioner which produces rates actuarially equivalent to the single premium rates in Table I:

OPn = 20/n+1 (SPn)

where SPn = Single Premium Rate per $100 of initial insured indebtedness repayable in n equal monthly installments;

OPn = Monthly Outstanding Balance Premium Rate per $1,000;

n = Original payment period, in months.

(3) The actuarial equivalent of paragraphs (1) and (2) shall be used if the coverage provided is a constant maximum indemnity for a given period of time.

(4) An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in equal amounts per month shall be used if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in equal amounts per month.

(5) If the benefits provided are other than those described above, rates for the benefits shall be actuarially consistent with rates provided in Paragraphs (1), (2), (3), and (4).

(6) The outstanding balance rate for credit accident and health insurance may be either a term specified rate or may be a single composite term outstanding balance rate applicable to all loans made under an open-end credit plan.

(7)(a) For an open-end credit plan, the monthly rate per $1,000 of outstanding principal balance shall be the rate calculated using the formula in paragraph (2) where n is the number of monthly indemnity payments required to completely extinguish the debt. The rate shall be further reduced to appropriately account for critical period if applicable.

(b) The critical period factors shall be filed with the department and shall not exceed the factors based on the 1968 Credit A and H Two Composite Tables published by the NAIC (Proceedings - 1968 Vol. II).

B. The premium rates in Subsection A shall apply to all policies providing credit accident and health insurance, to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis, or treatment within six months preceding the effective date of the debtor's coverage and which caused loss within the six months following the effective date of coverage.

(2) No other provision which excludes or restricts liability in the event of disability caused in a specified manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries.

(3) No actively at work test may require that the debtor be employed more than 30 hours per week.

(4) No age restrictions or only age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors who will have attained age 66 or over on the maturity date of the indebtedness.

(5) A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy for the indebtedness.

(6) A definition of disability, which is no more restrictive than one requiring that during the first 12 months of disability the insured shall be unable to perform the principal duties of his occupation at the time the disability occurred, and thereafter unable to perform the principal duties of any occupation for which the insured is reasonably fitted by education, training, or experience. This paragraph may not apply to lump sum disability coverage.

(7) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

R590-91-8. Refund Formulas.

A. Refund formulas which any insurer desires to use must be filed with and approved by the commissioner prior to use. Refund formulas used must develop refunds which are at least as favorable to the debtor as the following methods which are deemed the minimum requirements for the plans described.

(1) Pro Rata Method. The pro rata unearned gross premium method shall be deemed to produce the minimum refund amount to be used for level term credit insurance, and for credit insurance coverages under which premiums are collected

from the debtor on a basis other than the single premium basis.

Refund = t/n (original gross single premium) where t = the number of remaining months;

n = the original loan term in months.

(2) Rule of 78 method. The Rule of 78 or sum of the digits unearned premium method shall be deemed to produce the minimum refund amount to be used for insurance coverage which reduces in equal amounts per month and for which the premiums are collected on a single premium basis.

Refund = (t(t+1)/n(n+1)) (original gross single premium)

where t = the number of remaining months; n = the original loan term in months.

(3) Combination Methods. An appropriate combination of the pro rata method and the Rule of 78 method or, at the option of the insurer, the pro rata method shall be used for credit life insurance provided as a combination of level and decreasing term coverage and for credit accident and health insurance wherein the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in equal amounts per month.

B. For net indebtedness insurance and for other types of insurance and other modes of premium payment, each insurer shall file for approval and include in the policy appropriate formulas and/or factors for refunds, or reference to such formulas and factors that are on file with the commissioner. For net indebtedness, either the actuarial method also known as the U.S. Rule or pure premium method, or an arithmetic average of refunds due under Pro-Rata and Rule of 78 Methods will be acceptable.

C. In the event of termination, no charge for credit insurance may be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month, unless refunds are made on a pro rata basis for each day within the loan month.

D. If the total of all refunds due a debtor (or joint debtors) is less than $5.00, no refund need be made.

R590-91-9. Experience Reports and Adjustment of Prima Facie Rates.

A. Each insurer doing Credit Insurance business in this state shall annually file with the commissioner and the NAIC Support and Services Office a report of credit life insurance and credit accident and health business written on a calendar year basis. Each insurer shall utilize the Credit Insurance Experience Exhibit as approved by the National Association of Insurance Commissioners. The report shall contain data separately for this state. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

B. Whenever he deems necessary the commissioner will publish by order, after a hearing, Prima Facie Rates before September 1. The new prima facie rates shall be effective January 1 of the following year.

R590-91-10. Rating Standards - Filing Requirements.

A. Requirement to File the Four Year Loss Ratio Test.

(1) Insurers with more than $250,000 of credit insurance premium earned in Utah in the most recent four year period shall annually file an experience report to determine whether benefits are reasonable in relation to premiums based on the loss ratio test in Section 31A-22-807(4). The loss ratio shall be calculated at the rates actually used in each year. The insurer may also file an adjusted loss ratio report that adjusts premium to the most recent premium rates. The Four Year Loss Ratio Report is due one month after the due date of the experience exhibit required by Section 9.

(2) Insurers whose loss ratios are less than the minimum loss ratio by ten percentage points or more shall file a rating and benefits plan that meets the requirements of Subsection B. Insurers who would be required to decrease rates by more than 10% may phase in decreases in annual 10% increments.

B. Filing Standards.

(1) Insurers filing for a rate deviation, including those required to file under Subsection 1 above, shall submit an actuarial memorandum that shows that the premium rate does not exceed the sum of:

(a) 50% of the prima facie rate or its actuarial equivalent; and

(b) the expected losses.

(2) The calculation of expected losses shall take into account the following:

(a) the actual loss experience to the extent credible;

(b) the degree of underwriting used in marketing the product; and

(c) the relative mortality and morbidity of Utah experience when using national experience or actuarial tables.

R590-91-11. Rating Procedures - Direct Business Only.

A. Use of Rates Higher Than Prima Facie Rates.

An insurer may file for approval and use rates that are higher than prima facie rates if it can be expected that the use of those higher rates will produce a minimum loss ratio that is required by Section 31A-22-807.

B. Use of Rates Lower Than Filed Rates.

An insurer may use a rate that is lower than its filed rate without notice to the commissioner.

R590-91-12. Disclosure to Debtor.

A. When a premium or identifiable charge is payable by a debtor for credit insurance coverage, certain information must be disclosed to the debtor at the time the debtor applies for the insurance. The disclosures shall be made to the principal debtor and copies given to the debtor and retained in accordance with State and Federal law. These disclosures shall be made prominently and in close proximity to the space for the signature indicating the election to obtain the coverage. These disclosures may be made in conjunction with the Federal Truth-in-Lending disclosure, a Notice of Proposed Insurance, the application for insurance, or in the individual insurance policy or certificate. The following items must be included in the disclosure:

(1) the optional nature of the coverage;

(2) the premium or identifiable charge separately listed by type of coverage;

(3) eligibility requirements including health restrictions and at work requirements; and

(4) any age restrictions in regard to eligibility for insurance coverage at the time the indebtedness is incurred or in regard to cessation of coverage due to attainment of age.

B. If at any time during the term of the loan, the insurance is insufficient to pay off the scheduled outstanding balance of the loan, this fact must be clearly and prominently disclosed to the prospective insured on the policy or certificate.

C. All credit insurance policies and certificates shall clearly describe the amount of the benefit and the term of coverage. Whenever the amount of credit life insurance exceeds the unpaid indebtedness, such fact shall be clearly disclosed in the policy or group certificate; and such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

D. If any policy or certificate has a preexisting condition exclusion, such exclusion shall be clearly and prominently disclosed.

R590-91-13. Unfair Marketing Practices.

The commissioner finds that violations of this rule when engaged in by licensees of the department in connection with the sale or placement of credit insurance, or as an inducement, are misleading, deceptive, or unfairly induce the purchase of credit insurance and constitute unfair methods of competition

and shall be in violation of Unfair marketing practices under Section 31A-23a-402.

R590-91-14. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance law
March 13, 2002 31A-2-201
Notice of Continuation December 1, 2006

R590. Insurance, Administration.
R590-93. Replacement of Life Insurance and Annuities.
R590-93-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and pursuant to Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of this rule.

(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.

(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e).

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is

to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period; and

(vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) reissued with any reduction in cash value; or

(e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

(1) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by the applicant as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

(2) If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (1), the producer shall present and read to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described in Appendix A or other substantially similar document filed with the commissioner. However, a filing shall not be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing

insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to whether the applicant has existing policies or contracts;

(4) require with each application for life insurance or annuity that indicates an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-6. Duties of Replacing Insurers that Use Producers.

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five business days of the date the Notice is received by the company;

(c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and

(b) within ten business days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) within 5 business days of a replacement notification send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the Notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a Notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the

producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the Notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed Notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent question regarding existing policies or contracts;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-10. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-11. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing this rule 45 calendar days after the effective date.

KEY: life insurance, annuity replacement
August 8, 2007 31A-2-201
Notice of Continuation April 28, 2004 31A-23a-402

R590. Insurance, Administration.
R590-136. Title Insurance Agents' Annual Reports.
R590-136-1. Authority.

This rule is promulgated by the commissioner pursuant to Section 31A-23a-413 that requires the annual filing of a report by title agents and Subsection 31A-23a-503(8) that requires the commissioner to prescribe the forms for these annual filings.

R590-136-2. Purpose.

The purpose of this rule is to establish the form and filing deadline of title insurance agents' annual reports required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a).

R590-136-3. Definition.

For the purpose of this rule, "agent" shall mean:

(1) an agency as defined in Subsection 31A-23a-102(5); and

(2) individuals who are licensed to practice law in Utah and are not exempt from the requirements of Subsection 31A-23a-204(1) and (2).

R590-136-4. Financial Condition, Transactions and Affairs.

(1) Title insurance agents shall file a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles and a reserve fund report required by Subsection 31A-23-204(2). The reserve fund report shall include the following:

(a) gross income received from title insurance business;

(b) deposit required, 1% of gross income received from title insurance business;

(c) all deposits made and dates of deposits;

(d) reserve fund account number and depository institution name and address;

(e) balance after last deposit;

(f) copies of the account statements; and

(g) reporting period.

(2) The title insurance agent shall file a report that identifies the fidelity bond, professional liability insurance policy or other equivalent approved by the commissioner, that satisfies the requirement of Subsection 31A-23a-204(2).

(3) The reports required by this rule shall be verified and filed with the commissioner by April 30 of each year.

(4) The reports required are protected data. Access shall be restricted to the title insurance agent and the Insurance Department.

R590-136-5. Controlled Business.

(1) Pursuant to Subsection 31A-23a-503(8)(a) each title insurance agent shall report the names and addresses of any persons owning a financial interest in the title insurance agent as of the last day of the calendar year, who are known or reasonably believed by the title insurance agent to be producers of title business, and the proportion of the title insurance agent's gross operating revenues that are attributable to controlled business during the preceding calendar year. The report shall be filed by April 30 of each year. The controlled business report is a public record upon filing.

(2) Annual Report of Controlled Business Transactions forms are available from the Insurance Department and shall be utilized in reporting the controlled business transactions required by this rule. This form may be reproduced for use by a title insurance agent.

R590-136-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that 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 end the provisions of this rule are declared to be severable.

KEY: insurance law
November 1, 1996 31A-23-313
Notice of Continuation June 27, 2006 31A-23-403

R590. Insurance, Administration.
R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
R590-153-1. Authority.

This rule is promulgated pursuant to Section 31A-2-201(3)(a), in which the commissioner is empowered to make rules to implement the Insurance Code, and pursuant to the specific authority of Section 31A-23a-402(8), which authorizes the commissioner to define unfair methods of competition or any other unfair or deceptive act or practice in the business of insurance.

R590-153-2. Purpose.

The purpose of this rule is to identify certain practices, which the commissioner finds provide unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include, but are not limited to, the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title insurer, agency or producer.

R590-153-3. Scope.

This rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R590-153-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

A. "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(1) buying or selling interests in real property;

(2) making loans secured by interests in real property; and

(3) shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, sub-dividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.

B. "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

C. "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

D. "Business meals" shall include, but are not limited to, breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals rise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

E. "Official Trade Association Publication" means:

(1) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(2) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

F. "Business Activities" shall include, but are not limited to, sporting events, sporting activities, music and art events. In no case shall such business activities rise to the level of ceremonies, for example award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

G. "Bona fide real estate transaction" means:

(1) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property, or

(2) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any client, either directly or indirectly, except as specifically allowed in Section R590-153-6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23a-402:

A. The furnishing of a title insurance commitment without one of the following:

(1) sufficient evidence in the file of the title insurer, agency or producer that a bona fide real estate transaction exists; or

(2) payment in full at the time the title insurance commitment is provided.

B. The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

C. Furnishing escrow services pursuant to Section 31A-23a-406, for a charge less than the charge filed pursuant to Section 31A-19a-209(5) or the filing of charges for escrow services with the commissioner, which are less than the actual cost of providing the services.

D. Waiving all or any part of established fees or charges for services, which are not the subject of rates filed with the commissioner.

E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale".

F. Furnishing services not reasonably related to a bona fide title insurance or escrow, settlement, or closing transaction, including, but not limited to computer services, non-related delivery services, accounting assistance, legal counseling.

G. The paying for, furnishing, or waiving all or any part of the rental or lease charge for space, which is occupied by any client.

H. Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

I. Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency or producer, for example, secretary, clerk, messenger or escrow officer, to any client.

J. Paying for all or any part of the salary of a client or an employee of any client.

K. Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company.

L. Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any client to structure or complete a particular transaction.

M. Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value

for an activity, except as allowed under Subsection R590-153-6(F) of a client. Activities include, but are not limited to "open houses" at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

N. Sponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R590-153-6(C), or otherwise providing things of value for promotional activities of a client. Title insurers, agencies or producers may attend activities of a client if there is no additional cost to the title insurer, agency or producer other than their own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to clients or others attending the function.

O. Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions except as provided in Subsection R590-153-6(H). A letter or card in these instances will not be interpreted as providing a thing of value.

P. Providing either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the placement or steering of title insurance business by such lending institution. This does not preclude transactions with lending institutions, which are in the normal course of business.

Q. Furnishing any part of a title insurer's, agency's or producer's facilities, for example, conference rooms or meeting rooms, to a client or trade association without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

R. Furnishing information packets, listing kits, "farm" packages, reports, or any form of title evidence without first filing a specimen form copy with the commissioner and specifying a rate for which the form is available. The rate may not be less than the actual cost of producing the information and the material furnished.

S. Paying for any advertising on behalf of a client.

T. Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurer, agency or producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency or producer.

U. A direct or indirect benefit provided to a client which is not specified in Section R590-153-6 below, will be investigated by the department for the purpose of determining whether it should be defined by the commissioner as an unfair inducement under Section 31A-23a-402(8).

V. Donations to charitable organizations must:

(1) not be paid in cash; and

(2) if paid by negotiable instrument, be made payable only to the charitable organization; and

(3) be distributed directly to the charitable organization; and

(4) not provide any benefit to a client.

W. Title insurers, agencies and producers who have ownership in, or control of, other business entities may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R590-153-6. Permitted Advertising and Business Entertainment.

A. A title insurer, agency or producer may furnish the following without charge, and without additions, addenda or attachments which may be construed as reaching conclusions of the insurer, agency or producer regarding matters of marketable ownership or encumbrances:

(1) A copy of an existing plat map; or

(2) Tax information covering a specific parcel of real estate, for example, tax identification number, assessed owner, assessed value of land and improvements, or the latest tax amount; or

(3) other information regarding real property which the county recorder's office provides to the public free of charge, or at a nominal charge, and in the exact format and content as provided by the county recorder's office.

B. Advertisements by title insurers, agencies or producers must comply with the following:

(1) The advertisement must be purely self-promotional.

(2) Advertisements may not be placed in a publication, including an Internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client except as allowed under R590-153-6 (B)(3).

(3) Advertisements in official trade association publications are permissible as long as any title insurer, agency or producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

C. A title, insurer, agency or producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title insurer, agency or producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency or producer may not expend more than $15 per guest per open house. The open house may take place on or off the title insurer's, agency's or producer's premises but may not take place on the client's premises.

E. A title insurer, agency or producer may distribute self-promotional items having a value of $5 or less to clients, consumers and members of the general public. These self-promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

F. A title insurer, agency or producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

(1) The person representing the title insurer, agency or producer must be present during the business meal or business activity.

(2) There is a substantial title insurance business discussion directly before, during or after the business meal or business activity.

(3) The total cost of the business meal, the business activity, or both is not more than $100 per person, per day.

(4) No more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency or producer in a single day.

(5) The entire business meal or business activity may take place on or off the title insurer's, agency's or producer's premises, but may not take place on the client's premises.

G. A title insurer, agency or producer may conduct educational programs under the following conditions:

(1) The educational program shall address only title insurance, escrow or topics directly related thereto.

(2) The educational program must be of at least one hour duration.

(3) For each hour of education $15 or less per person may

be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a client per calendar quarter.

H. A title insurer, agency or producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of his/her immediate family with flowers or gifts not to exceed $75.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

R590-153-7. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R590-153-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
August 8, 2007 31A-2-201
Notice of Continuation November 27, 2002 31A-23a-402

R590. Insurance, Administration.
R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.
R590-228-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), 31A-22-807.

R590-228-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) Credit life and credit accident and health insurance filings required by Section 31A-21-201;

(b) Credit life and credit accident and health insurance rate filings required by Section 31A-22-807, R590-91; and

(c) report filings required by R590-91.

(2) This rule applies to all credit life insurance and credit accident and health insurance including group contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-228-3. Documents Incorporated by Reference.

(1) The department requires that documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007;

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007;

(c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007;

(d) "Utah Credit Life and Credit Accident and Health Filing Certification," dated July 2007;

(e) "Utah Annual Credit Life and Credit Accident and Health Insurance Filing Checklist," dated July 2007.

R590-228-4. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy and certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as schedule page, schedule of benefits and premiums, etc.

(3) "Electronic Filing" means;

(a) a filing submitted via the Internet by using the "System for Electronic Rate and Form filing: (SERFF) System; or

(b) a filing submitted via the Internet by using the Sircon system; or

(c) A filing submitted via an email system.

(4) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(5) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy. An example is a company change of name.

(6) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(7) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(8) "Filer" means a person or entity that submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;
(b) a rate, rate methodologies;
(c) a form;
(d) a document;
(e) an application;
(f) a report;
(g) a certificate;
(h) an endorsement;
(i) a rider; and
(j) an actuarial memorandum and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules; and

(b) returned to the insurer by the department with the reasons for rejection; and not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit. An example is a credit accident and health insurance rider.

(18) "Type of insurance" means a specific credit life and credit accident and health insurance product, as defined in the NAIC Coding Matrix, including, but not limited to, gross decreasing term, net decreasing term, level term, or truncated coverage.

(19) "Utah Filing Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted pursuant to this subsection 6 or 7.

R590-228-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees and filers are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;
(b) must be submitted as a new filing; and
(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) Filings may be reviewed:
(i) when submitted;
(ii) as a result of a complaint;
(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 30 days of the date "Filed" with the department.

(c) A new filing is required if a clerical corrections is made more than 30-days after the date "Filed" with the department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-228-11 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-228-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance; or request filing for more than one insurer.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the general information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(vii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(viii) Identify the intended market

(ix) Identify the types and durations of loans to be insured.

(x) Describe the methods of premium charge.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification" must be properly completed, signed, and attached to the supporting documentation tab. A false certification may subject the licensee or filer to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include on the supporting documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be attached to the supplementary documentation tab.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refilled.

(f) Items being submitted for filing.

(i) Any forms must be attached to the form schedule tab.

(ii) Any rating documentation, including actuarial memorandums and rate schedules, must be attached to the rate/rule schedule.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum and demonstration with sample rate calculations and a certification of compliance with Utah law are required in each filing. The memorandum must be currently dated and signed by the actuary.

(5) Sircon Filings.

(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-228-3, must be properly completed.

(i) Completed the transmittal by using the following:

(A) NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions); and

(B) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix. (ii) Do not submit the documents described in Section (a)(i) (A) and (B) with the filing.

(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purpose; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(v) Identify and describe any new or nonstandard benefits or rating methodologies.

(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(vii) Explain any change in benefits or premiums that may occur while the contract is in force.

(viii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(ix) Identify the types and durations of loans to be insured.

(x) Describe the methods of premium charge.

(c) Certification. The filer must certify that a filing has

been properly completed AND is compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification "must be properly completed and signed. A false certification may subject the licensee or filer to administrative action.

(d) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include:

(i) a copy of domicile approval for the exact same filing;

(ii) a filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(e) Group Questionnaire. All group filings must include signed and fully completed "Utah Life and Annuity Group Questionnaire".

(f) Letter of Authorization.

(i) When the filer is not the insurer, include a letter of authorization from the insurer.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(g) Statement of Variability. Any information that is variable must be bracketed in the form and must be explained in a statement of variability. If after filing, the information contained within the brackets changes, the filing must be refiled.

(h) Items being submitted for filing. Any form or rate items submitted for filing must be attached to the product forms tab.

(i) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum with sample rate calculations and a certification of compliance are required in each filing. The memorandum must be currently dated and signed by the actuary representing the insurer.

(j) Rates. All rates must be filed prior to use. All rates must be in compliance with 31A-22-807 and R590-91. A rate filing is required with each form filing.

(6) refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and reports.

R590-228-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must be in final printed form or printer's proof format.

(d) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission

(e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use. All John Doe data in the forms, including the premium rates and benefits, must be accurate and consistent with the actuarial memorandum and rate schedule.

(2) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, including the application, enrollment form, certificate, actuarial memorandum, certification, and rate schedule.

(c) Only one policy filing for a single type of insurance may be filed.

(3) Rider or Endorsement Filings. A rider or endorsement that provides benefits must include all filing documents required for a policy filing including:

(a) a listing of the base policy form number, title and Utah Filed Dates;

(b) a description of how the rider or endorsement affects the base policy; and

(c) appropriate actuarial memorandum and rate schedule.

(4) Application Filings. An application or enrollment form may be submitted as a separate filing or filed with its related policy and certificate. If an application has been previously filed or is filed separately, an informational copy of the application must be included with a policy or certificate filing.

(5) Rates. Rates are considered "File for Approval".

R590-228-8. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

(1) Insurers are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) Section 31A-22 Part VI, "Accident and Health Insurance;"

(e) Section 31A-22 Part VIII, "Credit Life and Accident and Health;"

(f) R590-91, "Credit Life and Disability;" and

(g) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(h) R590-192, "Unfair Health and Disability Claims Settlement Practices."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Actuarial Memorandum, Demonstration and Certification of Compliance. Each form and rate fling must include an actuarial memorandum, demonstration, and certification of compliance with Utah laws, signed and dated by the actuary representing the insurer.

(a) Actuarial memorandum must include a description of the following:

(i) types of coverage, such as gross or net decreasing, single or joint life, full term or truncated, critical period;

(ii) types of loans to be insured, such as open end, closed end,

(iii) types of premium charge: single premium, monthly outstanding balance, or other method explained in detail;

(iv) durations of loans and durations of coverage. Refer to 31A-22-801(2)(a);

(v) rates per unit, rating and premium methodologies including:

(A) formulas used for each type of coverage and premium method; and

(B) sample calculations for each type of coverage and premium method;

(vi) an explanation of whether the company has a Rating and Benefits Plan on file and if so, whether the submitted rates are consistent with the filed plan;

(vii) demonstration of compliance with applicable code and rules;

(viii) refund methods and calculation including formulas for each type of coverage; and

(ix) reserve bases including methods used.

(b) The actuarial certification must include certification of compliance that formulas and methods used produce rates that are in compliance with applicable Utah laws and rules for each type of coverage and duration in the filing.

(4) Rate Schedules.

(a) Rate schedules must be included for each type of

coverage and for representative durations.

(b) Rates must be identified as prima facie rates, rates previously filed for compliance with the Rating and Benefits Plan required in R590-91-10, or deviated rates submitted pursuant to 31A-22-807, or rates on nonstandard coverage pursuant to R590-91-5.

(5) All benefits must be reasonable in relation to the premium charge. Insurers filing for approval of a rate higher than prima facie rates must comply with the requirements of 31A-22-807 and R590-91-10. Include a demonstration that the rates are reasonable in relation to the benefits.

R590-228-9. Insurer Annual Reports.

(1) All insurer annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted along with the properly completed report checklist.

(2) "Credit Life and Credit Accident and Health Annual Report."

(a) Filings must comply with R590-91-10. Every Credit Life, and Credit Accident and Health insurer marketing must file annually.

(b) The report must include:

(i) Utah Credit Life, and Credit Accident and Health Report Checklist;

(ii) Annual report filings are due May 1 each year.

R590-228-10. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing. Information should include:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) Submission method, SERFF or Sircon; and

(e) tracking number.

(2) Status Checks. A complete filing is usually processed within 45 days or receipt. A filers can request the status of its filing by telephone, or email 60 days after the date of submission.

R590-228-11. Responses.

(1) Response to a Filing Objection Letter. A response to a Filing Objection Letter must include:

(a) a cover letter identifying all changes made;

(b) revised documents with all changes highlighted; and

(c) revised documents incorporating all changes without highlights.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the company chooses to make the requested change addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-228-12. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-228-13. Enforcement Date.

The commissioner will begin enforcing the provision of this rule May 1, 2004.

R590-228-14. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: credit insurance filings
July 30, 2007 **31A-2-201**
31A-2-201.1
31A-2-202

R590. Insurance, Administration.
R590-240. Procedure to Obtain Exemption of Student Health Programs From Insurance Code.
R590-240-1. Authority.

This rule is promulgated and adopted pursuant to Subsection 31A-1-103(3)(d) and Section 31A-2-201.

R590-240-2. Purpose and Scope.

(1) The purpose of this rule is to exempt student health programs established by institutions of higher education from regulation under the Utah Insurance Code.

(2) Health insurance from an insurer made available by an institution to its students is not exempt from provisions of the Utah Insurance Code under this rule, even if:

(i) the insurer's policy is integrated into the overall student health program offered by the institution to its students; or

(ii) use of the institution's student health center is an integral, or mandatory, part of health care coverage under the insurer's policy.

R590-240-3. Definitions.

(1) All definitions in Section 31A-1-301 are incorporated by reference.

(2) "Board" means the State Board of Regents established in Section 53B-1-103.

(3) "Eligible member" means:

(a) an eligible student;

(b) a spouse of an eligible student; or

(c) a child of, dependent of, or child placed for adoption with, an eligible student.

(4) "Eligible recipient" means:

(a) an eligible member;

(b) the institution's officers, faculty, and employees; or

(c) upon application by the institution or the institution's student health center, other persons approved by written order of the commissioner.

(5) "Eligible student" is as defined by each institution, but shall, at a minimum, require that the student be enrolled with the institution.

(6) "Health care provider" means a person who provides health care services.

(7) "Health care services" means "health care" as defined in Section 31A-1-301.

(8) "Institution" means an institution of higher education or postsecondary educational institute that consists of the following:

(a) an institution described in Section 53B-1-102; or

(b) an institution of higher education that has been accredited by the Northwest Commission on Colleges and Universities.

(9) "Student health center" means a facility that is operated to provide health care services to eligible recipients:

(a) by that institution or pursuant to contract with that institution;

(b) that employs health care providers, or contracts with health care providers, which may make referrals to other health care providers;

(c) is funded, at least in part, by payment from one of the following sources, which payment grants access to the student health center during the period of time for which the eligible student is registered:

(i) a fee assessed to and paid by each eligible student at registration; or

(ii) the tuition paid by the eligible student;

(d) may accept insurance payments, or assist users in completing claims forms for insurance claims; and

(e) may require eligible recipients to pay;

(i) an additional fee for each time the student health center is visited;

(ii) an additional fee for specialty services;

(iii) an additional fee for medical equipment; or

(iv) an additional fee for medication received at the student health center.

(10)(a) "Student health program" means a plan organized, established, or adopted, by an institution to provide or arrange for health care services for eligible members.

(b) A "student health program" may include providing:

(i) coverage for limited health care services;

(ii) coverage for health care services on an emergency basis; or

(iii) coverage for health care services by out-of-area health care providers under the following situations:

(A) on an emergency basis, where a prudent layperson would expect the absence of immediate medical attention to result in placing the eligible member's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

(B) during periods when the individual is not enrolled in any classes at the institution, but is still matriculated with the institution. Such periods may include time between semesters or quarters, traditional breaks for the summer, or time away from the institution while attending another higher education institution under a plan approved by the institution; and

(C) during periods when the individual is enrolled in classes at the institution, but is not living within commuting distance of the institution, such as while participating in an internship program.

(11)(a) "Supplemental health care services" means health care services provided by the student health program in addition to those available at a student health center.

(b) "Supplemental health care services" includes health care services provided by contract between:

(i) the institution, and

(ii) any of the following or any combination of the following:

(A) a healthcare provider;

(B) a clinic or other association of health care providers;

(C) a network plan; or

(D) an insurer authorized to provide health insurance.

(12) "Utah Insurance Code" means Title 31A, Utah Code Annotated.

R590-240-4. Supporting Facts.

(1) Student health programs are offered only to eligible members at institutions. These institutions have an interest in providing affordable health care coverage to their students in order to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs. In some instances, student health programs may also be offered to the spouses of students and other dependents of students, as well.

(2) Student health programs are not established to enable the institutions to make a profit from providing health care coverage. Providing or arranging for health care services for students is not the primary purpose of institutions; it is only incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution. In addition, the economic impact on health care providers directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by providing students at institutions with access to affordable health care coverage through student health programs.

(3) An institution is either a state institution under the direct control of, and supervised by, the Board, or it must be accredited by the Northwest Commission on Colleges and Universities. In order to be accredited, an institution must meet strict accounting standards, and be able to demonstrate it is financially solid. An institution must therefore comply with the

strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which would include the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program. Any shortfall in providing health care services at the student health center would become the obligation of the institution.

R590-240-5. Exemption Requirements.

A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.

(1) A student health program must:

(a) be established by an institution;

(b) have assets that are owned by:

(i) an institution;

(ii) a trust; or

(iii) the trustees, in their fiduciary capacities, of a trust established by an institution; and

(c) be operated by:

(i) an institution; or

(ii) the institution's authorized agent or affiliate.

(2) The primary purpose of the institution must be higher education, and not the providing of a student health program.

(3) Payment of covered claims of the student health program must be secured by adequate assets:

(a) that are:

(i) secured by being:

(A) pledged;

(B) guaranteed;

(C) contributed;

(D) placed in trust; or

(E) using a combination of Subsections 5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D); and

(ii) secured under Subsection 5(3)(a)(i) by:

(A) the student health program;

(B) the institution that organizes, adopts, or establishes the student health program;

(C) the owner of the institution described in Subsection 5(3)(a)(ii)(B);

(D) an affiliate of the entity described in Subsection 5(3)(a)(ii)(C); or

(E) a combination of the entities described in Subsections 5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D); and

(b)(i) in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; or

(ii) as approved by the commissioner by written order; and

(c) under such terms and conditions as the commissioner determines by written order.

(4) The student health program may not be offered to or enroll anyone other than an eligible member.

(5) The student health program must have a comprehensive legal structure that demonstrates that:

(a) the assets described in Subsection 5(3) will be administered in a fiduciary manner to assure that assets are available to provide eligible health care services and to provide payments to health care providers, as outlined in any contracts between the student health program and health care providers;

(b) the student health program will be administered by an experienced administrator; and

(c) the student health program shall be administered according to contracts between:

(i)(A)(I) the student health program; or

(II) the institution; or

(III) both the student health program and the institution; and

(B) the enrollees; and

(ii)(A)(I) the student health program; or

(II) the institution; or

(III) both the student health program and the institution; and

(B) health care providers.

(6) Except for emergency health care services, or out-of-area or out-of-country health care providers, health care services for those enrolled in the student health program must be provided:

(a) at a student health center; or

(b) pursuant to a contract with health care service providers, by which those health care providers will provide health care services upon a referral from the student health center.

(7) Any supplemental health care services provided by the student health program must:

(a) be obtained from an insurer authorized to provide health insurance;

(b) be backed by assets under the conditions set forth in Subsection 5(3); or

(c) use a combination of Subsections 5(7)(a) and 5(7)(b).

(8) The student health program must provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.

(9) The student health program or the institution or both shall annually provide the department an informational copy of all current policies, booklets, and advertising.

(10) The student health program or the institution or both must state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance, and the student health program has been exempted from regulation under the Utah Insurance Code, and must cite the date, docket number, and title of the docket by which the exemption was granted.

(11) The student health program must reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.

(12) The student health program must provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.

R590-240-6. Procedure for Obtaining Exemption.

(1) An institution desiring to have its student health program exempted from the provisions of the Utah Insurance Code shall file with the Utah Insurance Department an application in a form prescribed by the commissioner for an order exempting the student health program, and shall provide verifiable documentation in support of its application, including documentation to support the exemption requirements in Section 5 have been met. The application must provide assurance the institution has sufficient assets placed in trust, or otherwise pledged or guaranteed under Section 3, under conditions acceptable to the commissioner, to meet any liability the institution may have for its student health program.

(2) The commissioner may require the following:

(a) additional evidence or information, to be provided by the institution;

(b) an examination of the student health program by the department, the costs of which shall be borne by the institution; or

(c) a hearing on the application.

(3) Upon finding that the student health program complies with the provisions of this rule, the commissioner may issue an order exempting the student health program from the provisions of the Utah Insurance Code. The commissioner may place any

restrictions or conditions upon the exemption the commissioner believes to be necessary to protect the interests of the residents of this state.

(4) A student health program is not exempt from the Utah Insurance Code unless the commissioner has issued a written order explicitly stating the student health program is exempt from the Utah Insurance Code.

(5) The department shall retain continuing jurisdiction over the institution's student health program to assure compliance with the terms and conditions in Section 5, including any changes in the law or the facts upon which the exemption is granted.

R590-240-7. Rule and Findings.

(1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.

(2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.

(3) If the institution assumes any risk of the student health program, the institution must:

(i) apply for authority to conduct the business of an insurer, or

(ii) apply to the commissioner for an exemption under this rule.

(4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

(5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.

R590-240-8. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-240-9. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance exemptions
August 8, 2007 **31A-1-103**
31A-2-201

R590. Insurance, Administration.
R590-241. Rule to Recognize the Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.
R590-241-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-17-402(1).

R590-241-2. Purpose and Scope.

(1) The purpose of this rule is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with Sections 31A-17-504 and R590-198-5.

(2) This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance business in this State.

R590-241-3. Definitions.

(1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002 and is supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection (2). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(a) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(b) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the Proceedings of the NAIC, 3rd Quarter 2006. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) The tables identified in Subsections R590-241-3(1) and R590-241-3(2) are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

(4) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

R590-241-4. 2001 CSO Preferred Class Structure Table.

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates that at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation.

R590-241-5. Conditions.

(1) For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner or, at the direction of the commissioner, with the NAIC or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or

expedient for the administration of the provisions of this rule. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

R590-241-6. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

KEY: life insurance mortality tables
August 8, 2007 **31A-2-201**
31A-17-402

R595. Judicial Conduct Commission, Administration. **78-8-101 through 78-8-108**
R595-2. Administration.
R595-2-1. Executive Committee.

A. There is hereby established an executive committee of the Commission, comprised of the following three members of the Commission, all elected by the Commission: one legislator, one judge or member of the Utah State Bar, and one public member. The Commission chair shall serve as one of the members of, and as chair of, the executive committee.

B. The terms of committee members shall be two years. Committee members may be elected to subsequent terms.

C. The executive committee may:

1. recommend to the Commission the hiring or termination of the executive director;

2. hire and terminate the employment of other Commission staff;

3. approve the contracts of contract investigators;

4. recommend to the Commission salary increases for the executive director and other Commission staff;

5. investigate and resolve complaints against the executive director or Commission staff; and

6. perform other administrative duties as assigned by the Commission.

R595-2-2. Terms of Commission Chair and Vice Chair.

The terms of the Commission chair and vice chair shall be two years. The chair and vice chair may be elected to subsequent terms.

R595-2-3. Duties of Executive Director.

A. The executive director shall:

1. receive, acknowledge receipt of, and review complaints, refer complaints as provided by statute, conduct preliminary investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Commission regarding further proceedings or the disposition of complaints, conduct full investigations or file formal charges when directed to do so by the Commission, and act as examiner;

2. maintain records of the Commission's operations and actions;

3. compile statistics to aid in the administration of the Commission's operations and actions;

4. prepare and distribute an annual report of the Commission's operations and actions;

5. prepare the Commission's budget for submission to the Commission and the Legislature, and administer the funds;

6. subject to the approval of the Commission or the executive committee, hire and terminate Commission staff and enter into contracts with contract investigators;

7. direct the operations of the Commission's office, and supervise other members of the Commission's staff and contract investigators;

8. with the Commission's approval, engage experts in connection with proceedings;

9. make available to the public, the laws, rules and procedures affecting the Commission and its operations;

10. consider requests for extensions of time periods established by Commission rule, and may, upon a showing of good cause, grant such requests for a period of time not to exceed 60 days in the aggregate; and

11. perform other duties at the direction of the Commission.

B. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.

R600. Labor Commission, Administration.
R600-2. Operations.
R600-2-1. Business Hours.

The offices of the Commission shall be open for receipt of official documents during regular business days between the hours of 8:00 a.m. to 5:00 p.m. Any official document, including fax transmissions, received after 5:00 p.m. shall be considered received on the next working day.

KEY: labor commission, hours of business
December 3, 1996 34A-1-104
Notice of Continuation August 15, 2007

R602. Labor Commission, Adjudication.
R602-1. General Provisions.
R602-1-1. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who are duly admitted to practice law in Utah.

R602-1-4. Filing of Documents.

1. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing to, or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

KEY: witness fees, time, administrative procedures, filing deadlines
January 2, 2004 34A-1-302
Notice of Continuation August 15, 2007 63-46b-1 et seq.

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the request for agency action regarding a workers' compensation claim.

4. "Supporting medical documentation" means a Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury.

5. "Authorization to Release Medical Records" is a form authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, list of medical providers, Authorization to Release Medical Records and, when applicable, an Appointment of Counsel Form.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, or medical provider, to initiate agency action by filing an Application for Hearing with the Division. Applications for hearing shall include an original, notarized Authorization to Release Medical Records.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division.

3. All Applications for Hearing shall include any available supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Authorization to Release Medical Records may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of all available medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include available medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63-46b-11(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63-46b-11(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party

written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another 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 discovery 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 adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for

continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63-46b-14, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $112.50 per half hour for medical panel members and $125 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2007.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be

compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 20% of weekly benefits generated for the first $24,275, plus 15% of the weekly benefits generated in excess of $24,275 but not exceeding $48,550, plus 10% of the weekly benefits generated in excess of $48,550, to a maximum of $12,250.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 25% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $17,900;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $23,550.

4. In addition to attorneys fees authorized by this subsection, a prevailing applicant's attorney shall be awarded reasonable and necessary costs actually incurred in the prosecution of the applicant's claim, as determined by the ALJ.

D. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C.

R602-2-5. Settlement Agreements.

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedures, hearings, settlements
July 24, 2007 34A-1-301 et seq.
Notice of Continuation August 15, 2007 63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-1. Workers' Compensation Rules - Procedures.
R612-1-1. Definitions.

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 301. The employer must report all injuries, other than first aid administered on site or at an employer sponsored free clinic, to the Industrial Accident Division and to the insurance carrier. First aid treatment is defined as:

a. non-prescription medications at non-prescription strength;

b. administering tetanus immunizations;

c. cleaning, flushing, or soaking wounds on the skin surface;

d. using wound coverings, such as bandages, Band Aid (TM), gauze pads, etc., or using SteriStrips (TM) or butterfly bandages;

e. using hot or cold therapy (limited to hot or cold packs, contrast baths and paraffin);

f. using any totally non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.;

g. using temporary immobilization devices while transporting an accident victim (splints, slings, neck collars, or back boards);

h. drilling a fingernail or toenail to relieve pressure, or draining fluids from blisters;

i. using eye patches; using simple irrigation or a cotton swab to remove foreign bodies not embedded in or adhered to the eye;

j. using irrigation, tweezers, cotton swab or other simple means to remove splinters or foreign material from areas other than the eye;

k. using finger guards;

l. using massages;

m. drinking fluids to relieve heat stress;

First aid, as defined above, is limited to a one-time visit and one subsequent follow up visit within a 7 day time period. (This does not apply to reporting it on OSHA's 300 log). However, if first aid treatment is given by a licensed health professional in an employer sponsored free clinic then two subsequent visits within a 14 consecutive day time period are allowed. The employer must maintain the employer's injury report (Form 122) and health records on site for first aid treatment.

First aid, as defined in a through m, does not include any work injuries resulting in:

i) loss of consciousness;

ii) loss of work;

iii) restriction of work; or

iv) transfer to another job.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee. This form must be completed when a bill is generated for treatment administered by a licensed health care provider, as defined in 34A-2-11. This form is also to be completed by the health care provider if treatment, beyond first aid, is given at an employer sponsored free clinic. The form must be cosigned by the supervising physician, unless the form is completed by a nurse practitioner.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's adopted Resource-Based Relative Value Scale and the Medical Fee Guidelines. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Suspension of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify

an employee of the suspension of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation is suspended. The insurance carrier or self-insured employer must specify the reason for the suspension of beneftis.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident or occupational disease occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

J. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

K. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

L. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

M. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

N. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

O. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

P. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Industrial Accidents for approval.

Q. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

R. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

S. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

T. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

U. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

V. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those

instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;

2. Injury or occupational disease did not occur within the scope of employment;

3. Medical information does not support the claim;

4. Claim was not filed within the statute of limitations;

5. Claimant is not an employee of the employer he/she is making a claim against;

6. Claimant has failed to cooperate in the investigation of the claim;

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;

8. Tested positive for drugs or alcohol; or

9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing

benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Doctor's report of impairment rating;
4. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

a. Is the claimant engaged in a substantial gainful activity?

b. Does the claimant have a medically severe impairment?

c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1,1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step - Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

(i) the requesting party has a substantial possibility of prevailing on the merits;

(ii) the requesting party will suffer irreparable injury unless a stay is granted; and

(iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step - Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

D. For purposes of this rule, the following standards and definitions apply:

1. Other work reasonably available: Subject to medical restrictions and other provisions of the Act and rules, other work is reasonably available to a claimant if such work meets the following criteria:

a. The work is either within the distance that a resident of the claimant's community would consider to be a typical or acceptable commuting distance, or is within the distance the claimant was traveling to work prior to his or her accident;

b. The work is regular, steady, and readily available; and

c. The work provides a gross income at least equivalent to:

(1) The current state average weekly wage, if at the time of the accident the claimant was earning more than the state average weekly wage then in effect; or

(2) The wage the claimant was earning at the time of the accident, if the employee was earning less than the state average weekly wage then in effect.

2. Cooperation: As determined by an administrative law judge, an employee is not entitled to permanent total disability compensation or subsistence benefits unless the employee fully cooperates with any evaluation or reemployment plan. The ALJ will evaluate the cooperation of the employee using, but not limited to, the following factors: attendance, active participation, effort, communication with the plan coordinator, and compliance with the requirements of the vocational plan. In determining if these factors were met, the ALJ shall consider relevant changes in the employee's documents medical condition.

3. Diligent Pursuit: The employer or its insurance carrier shall diligently pursue the reemployment plan. The ALJ will evaluate the employer or insurance carrier's diligent pursuit of the plan using, but not limited to, the following factors: timely payment of expenses and benefits outline in the vocational plan, and as required by the educational institution providing the vocational training, communication with the employee, compliance with the requirements of the vocational plan, and timely modification of the plan as required by documented changes in the employee's medical condition.

4. Resolution of disputes regarding "cooperation" and "diligent pursuit": If a party believes another party is not cooperating with or diligently pursing either the evaluations necessary to establish a plan, or the requirements of an approved reemployment or rehabilitation plan, the aggrieved party shall submit to the workers' compensation mediation unit an outline of the specific instances of non-cooperation or lack of diligence. Other parties may submit a reply. The Mediation Unit will promptly schedule mediation to reestablish cooperation among the parties necessary to evaluate or comply with the plan. If mediation is unsuccessful, a party may request the Adjudication Division resolve the dispute. The Adjudication Division will conduct a hearing on the matter within 30 days and shall issue a written decision with 10 days thereafter.

R612-1-11. Burial Expenses.

(1) Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to $8,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

(2) Beginning in the year 2004 and every two years thereafter, the Commission shall review this rule and shall make such adjustments as are necessary so that the burial expense provided by this rule remains equitable when compared to the average cost of burial in this state.

KEY: workers' compensation, time, administrative procedures, filing deadlines

July 2, 2005	**34A-2-101 et seq.**
Notice of Continuation August 15, 2007	**34A-3-101 et seq.**
	34A-1-104 et seq.
	63-46b-1 et seq.

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2007, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2007, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2007, is incorporated by reference.

4. FR Vol. 72, No. 30, Wednesday, February 14, 2007, Pages 7136 to and including 7221 "Electrical Standard; Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2007, edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual

member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of

employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the

probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such

workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized

representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of

receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent

Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This

includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if

the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable

principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination

of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of

the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this

section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each

analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to

identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and

information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
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Notice of Continuation November 25, 2002

R638. Natural Resources, Geological Survey.
R638-2. Renewable Energy Systems Tax Credits.
R638-2-1. Purpose.

(A) This rule implements the responsibilities assigned to the Utah Geological Survey (UGS) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(C) This rule also establishes procedures for taxpayers to use when applying for UGS certification of tax credit eligibility and tax credit amounts, and for UGS to follow in reviewing such applications.

(D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R638-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the UGS and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, UGS is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or production of energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the UGS may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, UGS may also establish rules defining the reasonable costs of a system.

R638-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;

b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and

c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

a. material from a plant or tree; or

b. other organic matter that is available on a renewable basis, including:

i. slash and brush from forests and woodlands;

ii. animal waste;

iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;

iv. aquatic plants; and

v. agricultural products.

2. A biomass system does not include:

a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants

b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point. This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to $50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange equipment and that uses a "ground-source heat pump"

technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32. This can include ground source heat pumps and water source heat pumps using ground water or surface water.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10-1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and

2. Sells all or some of its energy output or uses its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsection 59-7-614(2)(c) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7-614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;
2. Biomass except for systems combusting biomass for heat;
3. Direct-use geothermal;
4. Geothermal electricity
5. Geothermal heat pump;
6. Hydroenergy;
7. Passive solar for heating or cooling;
8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to $2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

(Y) "USEP" means that Utah State Energy Program, a subdivision of the Utah Geological Survey, which is responsible for certifying tax credits specified under this rule.

(Z) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(AA) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R638-2-4. Investment Tax Credit Certification Process.

(A) The Utah State Energy Program (USEP), a subdivision of the UGS, is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by USEP to gather information necessary to implement this rule.

(C) USEP will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, USEP reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, USEP may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, USEP finds that a renewable energy system is eligible for a residential or commercial tax credit, USEP will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only USEP may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of USEP's evaluation of an application, USEP will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;

2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or

3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63-46b-12 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section 63-46b-13.

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;

2. The tax identification number or numbers of persons seeking a tax credit;

3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit USEP staff to locate the site for on-site verification of the information in the application.

4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation,

and other information specified in this rule.

(H). Applications for a residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that SEP staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.

2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.

3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow UGS to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R638-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of $50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed $50,000 for any single commercial unit.

(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of $2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed $2,000.

(C) Eligible costs for equipment are generally limited to system components that are both:

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end-use; and

2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or

2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) USEP may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R638-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R638-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a buildings conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems."

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar ration values ($kWh/M^2/day$). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at: http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF;

2. Collector tilt for fixed collectors shall be angled no greater than +/-15 degrees from the energy system site's geographic latitude;

3. Fixed collectors shall be oriented within 15 degrees of true south.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than $0.15 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at: http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($0.15 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($0.15 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel active solar thermal system exceeds $0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than $0.27 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at: http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($0.27 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($0.27 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel solar thermal system exceeds $0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

R638-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(A) All eligible costs for solar PV energy systems must conform with Section R638-2-5, above. Solar PV energy systems must also meet the requirements in this Section.

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);

2. Inverter;

3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:
1. Batteries;
2. Battery wiring;
3. Charge controllers; and
4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:
1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_pvmodules.cgi; or
2. The applicant can demonstrate to USEP that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:
1. They are also listed as eligible modules under the California Solar Initiative Program. A list of eligible inverters may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_inverters.cgi; or
2. The applicant can demonstrate to USEP that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems which will be considered to carry a cost $2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:
1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;
2. Positioned so as to optimize the average annual solar radiation values ($kWh/M^2/day$). Guidance for siting may be found at the the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at: http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF);
3. Module and/or array tilt for fixed collectors shall be angled no greater than +/-15 degrees from the energy system site's geographic latitude;
4. Positioned such that fixed modules and/or arrays are oriented within 15 degrees of true south.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:
1. A Utah licensed electrical contractor (S200);
2. A Utah licensed solar photovoltaic contractor (S215);
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or
4. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than $10 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
1. For a residential tax credit application with total pre-rebate eligible costs exceeding $10 per watt of capacity, the amount of the tax credit shall be calculated as follows:
Tax credit granted = (($10 x rated output capacity in watts) - rebates) x 0.25
2. For a commercial tax credit application with total eligible costs exceeding $10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:
Tax credit granted = (($10 x rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than $13 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
1. For a residential tax credit application with total pre-rebate eligible costs exceeding $13 per watt of capacity, the amount of the tax credit shall be calculated as follows:
Tax credit granted = (($13 x rated output capacity in watts) - rebates) x 0.25
2. For a commercial tax credit application with total eligible costs exceeding $13 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:
Tax credit granted = (($13 x rated output capacity in watts) - rebates) x 0.10

R638-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:

1. A means to allow the solar energy to enter the system;
2. A heat-absorbing surface;
3. A thermal storage mass located within the conditioned space;
4. A heat transferral system or mechanism and;
5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:
1. Trombe wall;
2. Water wall;
3. Thermosyphon;
4. Equipment or building shell components providing direct heat gain; and
5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U-factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:
1. For a non-loaded structure, 100% of the cost may be eligible;
2. For a loaded structure, 50% of the cost may be eligible;
3. Nothwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit calculated.

(G) No tax credit shall be given if USEP concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R638-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R638-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:
1. Listed as eligible under the California Emerging Renewables Program in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_smallwind.cgi; or
2. The applicant can demonstrate to USEP that the turbine meets standards that are equivalent to those of the California Emerging Renewables Program as of calendar year 2007.

(C) Inverters and charge controllers must by certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:
1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:
a. Buildings;
b. Utility poles or overhead utility lines;
c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.
2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:
a. Trees or other vegetation;
b. Buildings and other structures;
c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that SEP can verify appropriate siting. SEP also reserves the right to conduct a site visit to verify appropriate siting.

(F). Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:
1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than $5 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such

as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($5 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($5 x rated output capacity in watts) - rebates) x 0.10

R638-2-10. Investment Tax Credit , Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R638-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;

2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or

3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a provisional well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a geothermal heat pump system is considered to be no higher than $4,000 per ton of output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $4,000 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($4,000 x rated output capacity in tons) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $4,000 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($4,000 x rated output capacity in tons) - rebates) x 0.10

3. If the cost of a geothermal heat pump system exceeds $4,000 per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

R638-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R638-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been

designed by either:

1. A professional engineer licensed in Utah; or

2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R638-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

R638-2-13. Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R638-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;

2. Generator;

3. Rectifier;

4. Inverter;

5. Penstocks;

6. Penstock ventilation;

7. Buck and boost transformer;

8. Valves;

9. Drains;

10. Diversion structures (with the exception of storage dams, fish facilities, and canals);

11. Screened intake device; and

12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;

2. Battery temperature sensors;

3. Charge controller and necessary wiring and disconnects;

4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R638-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;

2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;

3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);

4. Engines or turbines used to power generators;

5. Generators;

6. Inverters;

7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(F) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of

an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or

2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to USEP for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other requirements of Section 59-7-614. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;

2. Wind energy systems; or

3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to USEP:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;

2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;

3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;

4. Information on the location of the commercial energy system sufficient to permit site inspection by USEP staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;

5. Photographs of key and/or representative components of the commercial energy system;

6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;

7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, USEP staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. USEP may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) USEP will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, USEP will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63, Chapter 46b (Administrative Procedures Act), upon its decision to grant or deny a certification request, USEP will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R638-2-16. Granting of Production Tax Credits.

(A) In order for a company to claim production tax credits on its Utah corporate income tax return, USEP must first validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to USEP information regarding the following:

1. The date that the commercial energy system first entered commercial service;

2. The beginning and ending dates of the company's tax year;

3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by USEP.

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to USEP invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. USEP will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, USEP will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;

2. Whether the number of kilowatt hours claimed appears to feasible and accurate;

3. The number of kilowatts deemed to be validate;

4. The amount of tax credit that the company may claim on

its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) Once USEP has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either USEP or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63-46b-12 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section 63-46b-13.

KEY: energy, renewable, tax credits, solar
August 31, 2007 **59-7-614**
59-10-1014
59-10-1106

R638. Natural Resources, Geological Survey.
R638-3: Energy Efficiency Fund.
R638-3-1. Purpose.

This rule is for the purposes of

A. Conducting the responsibilities assigned to the Board of the Utah Geological Survey (UGS) and the State Energy Program (SEP) in managing the Energy Efficiency Fund and implementing the associated loan program established in Utah Code Section 53A-20c-102; and

B. Establishing requirements for eligibility for loans from the Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R638-3-2. Authority.

Pursuant to Utah Code Section 53A-20c-102, the UGS board shall make rules establishing criteria, procedures, priorities, and conditions for the award of loans from the Energy Efficiency Fund.

R638-3-3. Definitions.

A. "Board" means the Board of the Utah Geological Survey.

B. "Energy" means, for the purposes of this rule, electricity, natural gas or other methane, fuel oil, coal, or propane that is used by a school district to operate a building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for the building's operation.

C. "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.

D. "Energy cost savings" means the value to a school district of the energy that is saved or is not consumed as a result of an energy efficiency project and is generally stated on an annual cost savings basis. This value is measured based upon the current cost per unit of the energy source or sources used by the building at which an energy efficiency project is to take place.

E. "Energy efficiency project" means

1. For existing buildings, a retrofit to improve energy efficiency;or

2. For new buildings, an enhancement to improve energy efficiency beyond the minimum required by the energy code.

3. It does not mean

a. The repair of existing buildings or equipment;

b. Projects that save money through the switching of fuels, energy sources, or vendors;

c. Projects or measures intended to save money by changing the time of day or year at which energy is consumed; or

d. Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.

F. "Energy savings" means the source thermal value (British thermal units or Btu's) of energy saved or not consumed as a result of an energy efficiency project. For purposes of this rule, the following conversion factors are used in converting energy units saved by a project into source Btus's when evaluating loan applications:

1. Electricity - One kilowatt hour = 10,495 Btu's.
2. Natural gas or methane - One therm = 100,000 Btu's.
3. Natural gas or methane - One cubic foot = 1,030 Btu's.
4. Fuel oil - One gallon = 138,690 Btu's.
5. Coal - One pound = 11,580 Btu's.
6. Propane - One gallon = 9,133 Btu's.

G. "Fund" means the Energy Efficiency Fund established by Utah Code Section 53A-20c-102.

H. "Utah Energy Code" means the most-recent edition of the International Energy Conservation Code currently in effect within the State of Utah and as incorporated and amended by Utah Rule 156.56 (Utah Uniform Building Standard Act Rules).

"Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

I. "SEP" means the State Energy Program, a subdivision of the Utah Geological Survey, which is required by Utah Code 53A-20c-102 to serve as staff to the revolving loan program associated with the Energy Efficiency Fund.

J. "UGS" means the Utah Geological Survey.

R638-3-4. Eligibility of Projects for Loans.

A. Eligibility for loans from the Fund is limited to school districts within the state of Utah.

B. Loans may be used only by school districts to fully or partially finance energy efficiency projects within buildings owned and operated by the school district.

C. For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures are eligible for loan financing from the Fund:

1. Building shell improvements;
2. Increase or improvement in building insulation;
3. Fenestration upgrades;
4. Lighting upgrades;
5. Lighting delamping;
6. Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;
7. Improvements to energy control systems;
8. Other energy efficiency projects that a district can demonstrate will result in a significant reduction in the consumption of energy within a building.

D. An energy efficiency project can be eligible as part of a new building construction if the following conditions are met:

1. The building measure or system for which a loan is sought must surpass the minimum prescriptive requirements of the Utah Energy Code; and

2. The completed building must exceed the minimum energy performance standards of the Utah Energy Code for its building type by at least 10%.

E. There is no limit to the total number of loans a single district may receive from the Fund, however, no district may receive a loan that would cause the sum of its outstanding loan balances to exceed $500,000.

F. An energy efficiency project is eligible for a loan only if the energy cost payback of the project is more than two and less than twelve years.

R638-3-5. Eligible Costs.

A. This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.

B. The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

1. Building materials;
2. Doors and windows;
3. Mechanical systems and components including HVAC and hot water;
4. Electrical systems and components including lighting and energy management systems.
5. Labor necessary for the construction or installation of the energy efficiency project;
6. Design and planning of the energy efficiency project;
7. Energy audits that identify measures that are included in the energy efficiency project;
8. Inspections or certifications necessary for implementing the energy efficiency project.

C. The following costs are not eligible for financing from

the Fund:

1. The costs of a construction or renovation project that are not directly related to energy efficiency measures;

2. Costs incurred for the acquisition of financing for the project;

3. Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.

D. In cases for which the school district receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the district for the project after third party financing.

E. For an energy efficiency project undertaken as part of a new building construction, only the incremental cost of the project is eligible. For purposes of this section, incremental cost means the portion of the overall cost of a measure or system that exceeds the cost that would have been incurred by meeting the minimum prescriptive requirements of the Utah Energy Code.

F. For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund.

R638-3-6. Loan Application Process.

A. The Board shall receive and evaluate applications for loans from the Fund no fewer than three times per year. Notice of due dates for applications will be made available to school districts no less than three months in advance of the next scheduled Board meeting at which applications will be evaluated.

B. School districts interested in applying for a loan should first contact SEP. SEP staff will consult or meet with district staff to make an initial assessment of the strength or weakness of a proposed project. SEP staff may also choose to conduct a site visit of the proposed project location prior an application. SEP staff may assist districts in evaluating potential project measures and in preparing an application.

C. Applications for loans will be made using forms developed by SEP. Application forms shall require that the following information be provided by the district:

1. Name and location of the district;

2. Name and location of the building or buildings where the energy efficiency project will take place;

3. A description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

4. A description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and their age and condition;

5. A description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

6. Projected or estimated energy savings that result from each measure undertaken as part of the project;

7. Projected or estimated energy cost savings from each measure undertaken as part of the project;

8. District funds expended per pupil in the district's most recent completed budget year;

9. A description of any additional community or environmental benefits that may result from the project.

D. Applications shall be received for the Board by the SEP which will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, whether proposed projects, measures, and costs are eligible for loan financing, and to assist the loan applicant in improving its application.

E. The Board shall establish a Review Committee to provide in-depth evaluation of loan applications. The Committee must consist of at least the following:

1. The SEP Manager;

2. An SEP technical specialist chosen by the SEP Manager;

3. The UGS Associate Director;

4. One member of the Board selected by the Board for a two year renewable term;

5. A representative of the Utah Office of Education approved by the Board for a two year renewable term.

Other members may be designated at the discretion of the Board.

F. When SEP has deemed that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Review Committee for its evaluation. The Review Committee shall provide an opportunity for applicants to make presentations on their projects to the Committee before it has evaluated pending applications.

G. The Review Committee will review and discuss the merits of each application in light of the application provided by the applicant, presentations made by the applicant, and technical analysis undertaken by SEP staff. After discussion of each application, Review Committee members will evaluate each according to the following criteria and scoring:

1. The feasibility and practicality of the project (maximum 30 points);

2. The projected energy cost payback period of the project (maximum 20 points);

3. The energy cost savings attributable to the project (maximum 10 points);

4. The energy savings attributable to the project (maximum 20 points);

5. The financial need of the district for the loan including its financial condition, expenses per pupil, and the availability of other grants, rebates, or low-interest loans for the project (maximum 10 points);

6. The environmental and other benefits to the state and local community attributable to the project (maximum 10 points).

A separate score sheet will be completed by each Review Committee member for each application under consideration.

H. The Review Committee will compile the scores of each of its members for each application. Based upon the compiled scores of all members, the Committee will make recommendations to the Board for the funding of energy efficiency projects. For applications that receive an average score of less than 70 points, the Review Committee shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the Review Committee will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.

I. The Review Committee provides advice and recommendations to the Board. It is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

J. Based upon the Review Committee's evaluations and recommendations, SEP will prepare a memorandum for the Board that will

1. Provide a brief description of each project reviewed by

the Review Committee;

2. List the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;

3. List the energy savings, energy cost savings, and cost payback for each project as estimated by the SEP technical specialist for the program;

4. List the aggregated total score and scores in each evaluation criterion for each application;

5. Specify projects recommended for funding and those not recommended for funding;

6. Provide a brief explanation of the Review Committee's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than one week prior to the next scheduled Board meeting at which applications will be evaluated.

K. At its next scheduled meeting after the Review Committee has met, the Board will consider pending applications for loans from the Fund and will review the Review Committee's recommendations for each project. The Board will then vote on each application. Applications receiving a majority of votes for approval from members that are present will be awarded loans from the Fund.

L. When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

R638-3-7. Loan Terms.

A. The maximum amount that may be approved by the Board for any single energy efficiency project is $250,000. The minimum amount that may be approved is $5,000.

B. No district may receive a loan that would cause the sum of its outstanding loan balances to exceed $500,000.

C. The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the school district. In cases where costs have exceeded those presented in the initial application, a district may request that the Board increase its loan award, subject to the limitations of subsections (A) and (B) above.

D. After approval of a loan application by the Board, a school district has one year in which to complete the energy efficiency project. If at the end of one year a school district is unable to meet this time limitation, it may request an extension from the Board of no more than six additional months.

E. Loan amounts from the Fund will be disbursed only upon the completion of an energy efficiency project.

F. Once a project has been completed, the school district shall provide to SEP documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SEP will use this information to determine the actual cost of the project measures approved by the Board.

G. The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

1. This amount exceeds $250,000, in which case the amount of the loan will be set at $250,000; or

2. This amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

3. This amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the school district.

H. No interest will be charged to school districts receiving loans for energy efficiency projects from the Fund.

I. A small administrative fee may be charged to loan recipients to defray the cost of servicing loan accounts. The fee will be no less than $100 and no more than $200 per year of the loan's term.

J. Loan repayment periods will be set to be approximately equal to the energy cost payback of each loan. The loan repayment period for a specific energy efficiency project begins with the first day of the next quarter after loan funds have been disbursed.

K. Loan repayments will be due at the beginning of each quarter.

L. Loan repayment amounts will be calculated as follows:

((Final loan amount + administrative fee) / cost payback period) / 4

M. School districts that are approved for a loan award will enter into a contract with SEP that specifies all terms applying to the loan, including the terms specified in this rule and standard contract terms for contracts and loans currently in effect for the State of Utah.

R638-3-8. Reporting and Site Visits.

A. In the period between Board approval and project completion, the school district shall complete and provide to SEP a report at the beginning of each quarter. The report shall include information on the district's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval such as construction delays or cost overruns.

B. After loan funds have been disbursed, the school district shall complete and provide to SEP annual reports due at the beginning of the calendar quarter in which the anniversary of the loan disbursement occurs. This report shall include the following:

1. A description of the performance of the building and of the performance of the measures included in the energy efficiency project;

2. A description of any notable problems that have occurred with the building or the project;

3. A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;

4. Copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

5. Documentation of energy consumed by the building in the prior year.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, whichever is longer.

C. If a schools district fails to submit the annual reports described in subsection (B) above, the Board may bar the district from eligibility for future loans from the Fund

D. Approximately one year after project completion, SEP staff will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by SEP staff during the repayment period. Loan recipients will assist SEP with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, schools, loans
August 31, 2007 53A-20c-102

R651. Natural Resources, Parks and Recreation.
R651-201. Definitions.
R651-201-1. Approved.

"Approved" means approved by the commandant of the United States Coast Guard, unless the context clearly requires a different meaning. For carburetor backfire flame control devices "approved" means the device is marked with one of the following: a U.S. Coast Guard approval number; complies with Underwriters Laboratory test UL 1111; or complies with the Society of Automotive Engineers test SAE J-1928.

R651-201-2. Sailboard.

"Sailboard" means a wind-propelled vessel with a mast and sail that are held up by the operator who stands while operating the vessel.

R651-201-3. Good and Serviceable Condition.

(1) "Good and Serviceable condition" means any required equipment must be in proper operating condition; and

(a) Required labels and markings shall be intact and legible;

(b) Required equipment shall not be stored inside original packaging; and

(c) A PFD is considered to be in serviceable condition only if the following conditions are met:

(i) No PFD may exhibit deterioration that could diminish the performance of the PFD, including metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion; webbings or straps used to secure the PFD on the wearer that are ripped, torn or which have become separated from an attachment point on the PFD; or any other rotted or deteriorated structural component that fails when tugged.

(ii) In addition to meeting the requirements of paragraph (i) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material; buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which show evidence of fungus or mildew; or loss of buoyant material or buoyant material that is not securely held in position.

(iii) In addition to meeting the requirements of paragraph (i) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, except as provided in paragraph (iv) of this section; inflatable chambers that are all capable of holding air; oral inflation tubes that are not blocked, detached or broken; a manual inflation lanyard or lever that is not inaccessible, broken or missing; and, inflator status indicators that are not broken or otherwise non-functional.

(iv) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (i) and (iii) of this section.

R651-201-4. Immediately Available.

"Immediately available" means stored in plain and open view in the area where it will be used; not obstructed, blocked or covered in any way and capable of being quickly deployed.

R651-201-5. Readily Accessible.

"Readily Accessible" means easily located and retrieved without searching, delay or hindrance.

KEY: boating, parks
August 7, 2007 **73-18**
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-206. Carrying Passengers for Hire.
R651-206-1. Definitions.

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For float trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For float trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(10) "License" means a Utah Captain's/Guide's License or a U.S. Coast Guard Master's License.

(11) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak, or similar vessel).

(12) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(13) "Other rivers" means all rivers or river sections in Utah not defined in Subsection (18) of this rule as a whitewater river.

(14) "Permit" means a Utah Boat Crew Permit.

(15) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(16) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(17) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(18) "Whitewater river" means the following river sections: the Green and Yampa Rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other Division recognized whitewater rivers in other states.

(19) "Float trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A float trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

R651-206-2. Outfitting Company Responsibilities.

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a $150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a $200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license

or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel.

(c) A check of the vessel's required carriage of safety equipment.

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of $1,000,000 aggregate per incident.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip operation logs;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit.

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah Captain's/Guide's License or Utah Boat Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah Captain's/Guide's License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah Captain's/Guide's License or Utah Boat Crew Permit, with the appropriate whitewater river or other river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," "other," and "flatwater" river designations.

(e) A license with an "Other River Guide" endorsement is required when carrying passengers for hire on any river or river section designated as "other" or "flatwater."

(f) A permit with a "lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Other River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Other River Guide" endorsement.

(j) All Vessel Operator Permits and River Guide 1, 2, 3, and 4 Permits will expire at the end of their current term. Applications for renewal or duplicate of a Vessel Operator or River Guide Permit will be changed to the respective Utah Captain's/Guide's License or Utah Boat Crew Permit.

(k) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a Utah Captain's/Guides License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in person at a Division designated location.

(c) The applicant shall pay a $50 application fee for the license and first endorsement. A fee of $10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the four types of license endorsements:

(i) Lake and Reservoir Captain (LCG)

(ii) Tow Vessel Captain (TCG)

(iii) Whitewater River Guide (WCG)

(iv) Other River Guide (OCG)

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A current Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah Captain's/Guide's License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test.

(iv) Pay a $15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain (LCG) - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Captain (TCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Guide (WCG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Other River Guide endorsement.

(iv) Other River Guide (OCG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah Captain's/Guide's License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Captain's/Guide's License may be renewed within the six months prior to its expiration.

(b) To renew a Utah Captain's/Guide's License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah Captain's/Guide's License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Boat Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first permit, the application and issuance of the permit shall be done, in person, at a Division designated location.

(c) The applicant shall pay a $50 application fee for the original permit and first endorsement. A $10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of permit endorsements:

(i) Lake and Reservoir Crew (LRC)

(ii) Tow Vessel Crew (TVC)

(iii) Whitewater River Crew (WRC)

(iv) Other River Crew (ORC)

(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American

Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(ii) The first aid certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.

(i) Lake and Reservoir Crew (LRC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Crew (TVC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Crew (WRC) - A minimum of three river trips on "whitewater" rivers or river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Other River Crew endorsement.

(iv) Other River Crew (ORC) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.

(6) A Utah Boat Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Boat Crew Permit may be renewed within the six months prior to its expiration.

(b) To renew a Utah Boat Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.

(c) The renewed permit will have the same month and day expiration as the original permit.

(d) A Utah Boat Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.

(e) A Utah Boat Crew Permit holder who upgrades to a Utah Captain's/Guide's License, within one year of when the permit was issued, shall receive a $25 discount on the fee for the Utah Captain's/Guide's License.

(7) In the event a Utah Captain's/Guide's License or a Utah Boat Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.

(a) The applicant must complete the prescribed application form.

(b) The fee for a duplicate license or permit is $15.

(8) Current Utah Captain's/Guide's License and Utah Boat Crew Permit holders shall notify the Division within 30 days of any change of address.

(9) A Utah Captain's/Guide's License or Utah Boat Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:

(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.

(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;

(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;

(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;

(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.

(10) A Utah Captain's/Guide's License or Utah Boat Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or designated flatwater river section, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.

(11) Number of passengers carried for each license or permit holder.

(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.

(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.

(12) Low capacity vessels being led requirements.

(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.

(b) On lakes, reservoirs, and designated flatwater river sections, there shall be at least one qualified license or permit holder for every six low capacity vessels being led in a group.

(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.

(14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah Captain's/Guide's License or Utah Boat Crew Permit as required by this section.

R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs a being stowed on the vessel, the PFDs shall be stowed in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, hard-hulled kayak or white water canoe operators or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, for hard-hulled kayak or sea-kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) Float trip vessels are only required to carry a map of the water body.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable

privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

R651-206-7. Towing Vessels for Hire Requirements.

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee. The registration of a person or entity towing for hire will be required beginning January 1, 2008.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be a minimum of $1,000,000 per incident.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one license holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

(a) PFDs.

(i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.

(ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.

(b) Vessel shall be equipped with a depth finder.

(c) Tow Line.

(i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

(v) A jump starting system;

(vi) A tool kit and spare items for repairs on assisting vessel; and

(vii) Damage control items for quick repairs to another vessel.

R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the Float Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

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R651. Natural Resources, Parks and Recreation.
R651-215. Personal Flotation Devices.
R651-215-1. Definitions.

(1) "PFD" means personal flotation device.

(2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.

(3) "Wear" means to have the PFD properly worn with all fasteners connected.

(4) "Whitewater canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: floatation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. PFD Requirements for Vessels Less than 16 Feet in Length.

No person shall operate or give permission for the operation of a vessel less than 16 feet in length unless there is at least one Type I, II, or III PFD for each person on board.

R651-215-3. PFD Requirements for Vessels 16 Feet or More in Length.

No person shall operate or give permission for the operation of a vessel 16 feet or more in length unless there is at least one Type I, II, or III PFD for each person on board. In addition to the total number of PFD's, there shall also be one Type IV PFD on board.

R651-215-4. Types of Personal Flotation Devices.

Type I - Off-shore Life Jacket - provides the most buoyancy of any type of PFD. Designed to turn the most unconscious wearers to a face-up position in the water. Effective for all waters, especially open, rough or remote waters where rescue may be delayed. Acceptable for use on all vessels.

Type II - Near Shore Buoyancy Vest - is designed to turn some unconscious wearers to a face-up position in the water. Intended for calm, inland waters where there is a good chance of quick rescue.

Type III - Flotation Aid - Good for conscious users in calm, inland waters where there is good chance of quick rescue. Designed so conscious wearers can place themselves in a face up position in the water. The wearer may have to tilt their head back to avoid turning face-down in he water.

Type IV - Throwable Device - Designed to be thrown to a person in the water and grasped and held by the user until rescued. Not designed to be worn.

Type V - Special Use Device - Intended for specific activities and may be carried instead of another PFD if used according to the approval conditions on its label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried or worn in lieu of another required PFD, but only if it is used according to the approval conditions on its label.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, are required and shall be used according to the approval conditions on their labels.

R651-215-8. River Throw Bag in Lieu of Type IV PFD.

On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-9. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this Section.

(2) All persons on board a personal watercraft or a sailboard shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On rivers, every person on board a vessel shall wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water areas as listed in Section R651-215-12.

R651-215-10. River Flat Water Areas.

(1) On the Green River:

(a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;

(b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;

(c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;

(d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and

(e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.

(2) On the Colorado River:

(a) from the Colorado/Utah state line to the Westwater Ranger Station;

(b) from Big Hole Canyon in Westwater Canyon to Onion Creek;

(c) from Drinks Canyon, mile 70, to the confluence with the Green River; and

(d) after the last active rapid in Cataract Canyon.

(3) On the San Juan River, after the last active rapid prior to Lake Powell.

R651-215-11. PFDs.

All Personal Flotation Devices (PFDs) must be used according to the conditions or restrictions listed on the U.S. Coast Guard Approval Label.

KEY: boating, parks
August 7, 2007 **73-18-8**
Notice of Continuation February 13, 2006

R651. Natural Resources, Parks and Recreation.
R651-217. Fire Extinguishers.
R651-217-1. Fire Extinguishers On Motorboats.

All motorboats, unless exempt, must have on board a readily accessible and approved fire extinguisher as specified in Section R651-217-2.

R651-217-2. Fire Extinguishers Required.

TABLE

LENGTH OF MOTORBOAT	NUMBER/SIZE
Less than 26 feet in length*	1/B-I
26 feet to less than 40 feet in length	2/B-I or 1/B-II
40 feet to 65 feet in length	3/B-I or 1/B-I and 1/B-II

* If an outboard motorboat of open construction and not carrying passengers for hire, a fire extinguisher is not required (see Section R651-217-5).

R651-217-3. Fire Extinguisher Types.

TABLE

LISTING	TYPES: FOAM	CARBON DIOXIDE	DRY CHEMICAL	HALON
B-I	1.25 gal	4 lbs	2 lbs	2.5 lbs
B-II	2.5 gal	15 lbs	10 lbs	10 lbs

R651-217-4. Engine Compartment Fire Extinguishers.

When the engine compartment is equipped with a fixed extinguishing system, one less B-I extinguisher is required.

R651-217-5. Open Construction Exemptions.

An outboard motorboat is not considered "of open construction" if any one of the following conditions exist: closed compartment under thwarts (motor well) and seats where portable fuel tanks may be stored; double bottoms not sealed to the hull or which are not completely filled with flotation material; closed living spaces; closed stowage compartments in which combustible or flammable materials are stored; or permanently installed fuel tanks.

R651-217-6. Certifying, Recharging, or Servicing a Fire Extinguisher.

Each fire extinguisher, except a disposable fire extinguisher, must show evidence of being certified, recharged, or serviced once every five years, or a current standard as described in the National Fire Protection Agency - Publication 10, by a qualified fire fighting equipment repair service.

R651-217-7. Disposable Fire Extinguishers.

(1) If a fire extinguisher is unable to be certified, recharged or serviced by a qualified fire fighting equipment repair service, it is considered disposable.

(2) The serviceability of a disposable fire extinguisher expires upon being discharged, loss of pressure or charge, or 12 years from the date of manufacture printed on the label or imprinted on the bottom of the fire extinguisher.

KEY: boating, parks
August 7, 2007 **73-18-8(4)**
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-219. Additional Safety Equipment.
R651-219-1. Sound Producing Device.

(1) Vessels 16 feet to less than 40 feet in length shall have on board a means of making an efficient sound, horn or whistle, capable of a four-to-six-second blast.

(2) Vessels 40 feet to less than 65 feet in length shall have on board a horn and a bell. The horn shall be capable of a four-to-six-second blast and audible for one-half mile. The bell shall be designed to give a clear tone.

R651-219-2. Bailing Device.

All vessels, not of self-bailing design, shall have on board an adequate bail bucket or be equipped with a mechanical means for pumping the bilge.

R651-219-3. Spare Propulsion.

Vessels less than 21 feet in length shall have on board at least one spare motor, paddle or oar capable of maneuvering the vessel when necessary. On rivers when one-or-two-man capacity vessels less than 16 feet in length are traveling in a group, the above requirement may be met by carrying one spare oar or paddle for every three vessels in the group. On hard hulled white water kayaks, paddles designed to be strapped to or worn on the hand must meet this requirement.

R651-219-4. Airboat Requirements.

Airboats operated on the Great Salt Lake and adjacent refuges shall also have on board a compass and one of the following: approved flares, a strobe light, or other visual distress signal.

R651-219-5. Equipment Good and Serviceable.

All required safety equipment shall be in good and serviceable condition, and readily accessible, unless required to be immediately available.

R651-219-6. Law Enforcement Vessels.

No vessel operator except authorized law enforcement and emergency vessel operators may display red or blue flashing lights or sound a siren on any waters of this state.

R651-219-7. Equipment Exemptions.

(1) Sailboards and personal watercraft are exempt from the following rules: Section R651-219-2 bail buckets; Section R651-219-3 spare propulsion; and Section R651-225-4 prohibiting riding on exterior surfaces.

(2) Vessels owned by the Lagoon Corporation and operated by its employees or customers under the controlled use and confines of the Lagoon Amusement Park waterways are exempt from the following Sections: R651-215-11 (3), R651-219-2, and R651-219-3.

(3) Vessels owned by the Salt Lake Airport Hilton Inn and operated by its employees or customers under the controlled use and confines of the Salt Lake Airport Hilton Inn waterways are exempt from the following sections: R651-219-2 and R651-219-3.

(4) Racing vessels participating in a sanctioned race may be exempted from certain equipment requirements by the division upon written request to the division. The equipment exemption shall only be in effect the day before and the day of the race if conditions of the exemption are met.

KEY: boating, parks
August 7, 2007 **73-18-8(6)**
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-221. Boat Liveries - Boat Rental Companies.
R651-221-1. Boat Livery Responsibilities.

(1) Each boat livery shall register with the Division annually and pay the appropriate fee, prior to the commencement of the operation.

(a) The annual boat livery registration requires the following:

(i) The completion of the prescribed application form;

(ii) Evidence of a valid business license; and

(iii) Payment of the prescribed fee.

(b) The annual boat livery registration fee shall be:

(i) $50 for boat liveries with up to 25 vessels in its fleet;

(ii) $75 for boat liveries with up to 50 vessels in its fleet;

(iii) $100 for boat liveries with more than 50 vessels in its fleet.

(c) A boat livery that is registered with the Division as an outfitting company shall not pay the boat livery registration fee.

(d) The annual boat livery registration will be required beginning January 1, 2008.

(2) The name of the boat livery shall be displayed on the outward superstructure of each vessel in the boat livery's fleet. If another governmental agency prohibits the display of a livery's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(3) A boat livery shall produce a lease or rental agreement for each vessel leased or rented from its fleet.

(a) The lease or rental agreement shall be signed by the owner of the livery or his representative and by the person leasing or renting the vessel.

(b) A copy of the lease or rental agreement shall be carried on board the vessel and shall contain the following information:

(i) The name of the person leasing or renting the vessel;

(ii) The vessel's assigned bow number, hull identification number, or other number if the vessel is not powered by a motor or sail;

(iii) A description of the vessel's make, model, color and length;

(iv) The period of time for which the vessel is leased or rented; and

(v) A check-off list of the required safety equipment provided on the vessel.

(c) For non-motorized vessels rented or leased in a group, one rental agreement is required and shall be carried on board one of the vessels by the person who rented or leased the vessels or the designated group leader.

(4) Upon request of an agent of the Division, the owner of a boat livery or his representative shall provide the Division with a copy of a lease or rental agreement.

(5) The certificate of registration for a leased or rented vessel may be retained on shore by the boat livery.

(6) A recreational "equipment timeshare" business which leases or rents vessels for consideration is a boat livery.

(7) A boat livery shall have each vessel in its fleet that is equipped with a 50 hp or greater motor covered with liability insurance as required in UCA 73-18c-101 through 308, and UCA 31A-22-1501 through 1504.

KEY: boating, parks
August 7, 2007 **73-18-10(2)**
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

I. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)

2. $35.00 Senior Multiple Park Permit (good for all parks)

3. $200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $10.00 per private motor vehicle

Table 1

Deer Creek	Jordanelle - Hailstone

2. $9.00 ($5.00 for seniors) per private motor vehicle or $5.00 per person ($3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 2

Utah Lake	Willard Bay

3. $7.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 3

Bear Lake - Marina	Bear Lake - Rendezvous
Dead Horse Point	East Canyon
Jordanelle - Rockcliff	Quail Creek
Rockport	Sand Hollow
Yuba	

4. $6.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 4

Antelope Island	Goblin Valley
Hyrum	Kodachrome
Palisade	

5. $2.00 ($1.00 for seniors) per private vehicle at the following park:

TABLE 5

Great Salt Lake

6. $6.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and $3.00 for seniors at Utah Field House State Park.

7. $2.00 per person ($1.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 6

Camp Floyd
Territorial

8. $3.00 per person ($1.50 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 7

Anasazi	Edge of the Cedars
Fremont	Iron Mission

9. $5.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors),for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

10. $10.00 per OHV rider at the Jordan River OHV Center.

11. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants ($15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

E. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $9.00 with pit or vault toilets; $12.00 with flush toilets; $15.00 with flush toilets and showers or electrical hookups; $18.00 with flush toilets, showers and electrical hookups; (Dead Horse Point, electrical hookups - $20); $21.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.

2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $12.00

b. Nine holes weekdays (except holidays) - $10.00

c. Nine holes Jr/Sr weekdays (except holidays) - $8.00

d. 20 round card pass - $160.00

e. 20 round card pass (Jr only) - $100.00

f. Promotional pass - single person (any day) - $450.00

g. Promotional pass - single person (weekdays only) - $300.00

h. Promotional pass - couples (any day) - $650.00

i. Promotional pass - family (any day) - $850.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non -player - $4.00

l. Motorized cart (18 holes) - $10.00

m. Motorized cart (9 holes) - $5.00

n. Pull carts (9 holes) - $2.00

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

q. Driving range - small bucket - $2.50

r. Driving range - large bucket - $3.50

2. Wasatch Mountain and Soldier Hollow rental and green fees.

a. Nine holes general public - $13.50

b. Nine holes general public (weekends and holidays) - $13.50

c. Nine holes Jr/Sr weekdays (except holidays) - $11.00

d. 20 round card pass - $220.00 - no holidays or weekends

e. Annual Promotional Pass (except holidays) - $1,000.00

f. Business Class Membership Pass - $1,000.00

g. Companion fee - walking, non-player - $4.00

h. Motorized cart (9 holes - mandatory on Mt. course) - $13.00

i. Motorized cart (9 holes single rider) - $7.00

j. Pull carts (9 holes) - $2.25

k. Club rental (9 holes) - $6.00

l. School teams - No fee for practice rounds with coach and team roster (Wasatch County only).

Tournaments are $3.00 per player.

l. Tournament fee (per player) - $5.00

m. Driving range - small bucket - $2.50

n. Driving range - large bucket - $5.00

o. Advance tee time booking surcharge - $15.00

3. Green River rental and green fees.

a. Nine holes general public - $10.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $140.00

e. Promotional pass - single person (any day) - $350.00

f. Promotional pass - personal golf cart - $350.00

g. Promotional pass - single person (Jr/Sr weekdays) - $275.00

h. Promotional pass - couple (any day) - $600.00

i. Promotional pass - family (any day) - $750.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non-player - $4.00

l. Motorized cart (9 holes) - $10.00

m. Motorized cart (9 holes single rider) - $5.00

n. Pull carts (9 holes) - $2.25

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

4. Golf course hours are daylight to dark

5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

6. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00

b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - $15.00 (until 2:00 p.m.)

d. Monthly - $4.00/ft.

e. Monthly with Utilities - (Bear Lake) $6.00/ft.

f. Monthly with Utilities - (Other Parks) $5.00/ft.

g. Monthly Off Season - $2.00/ft

h. Monthly (Off Season with utilities) - $3.00/ft

2. Dry Storage Fees:

a. Overnight (until 2:00 p.m.) - $5.00

b. Monthly During Season - $75.00

c. Monthly Off Season - $50.00

d. Monthly (unsecured) - $25.00

C. Application Fees - Non -refundable PLUS Negotiated Costs.

1. Grazing Permit - $20.00

2. Easement - $250.00

3. Construction/Maintenance - $50.00

4. Special Use Permit - $50.00

5. Commercial Filming - $50.00

6. Waiting List - $10.00

D. Assessment and Assignment Fees.

1. Duplicate Document - $10.00

2. Contract Assignment - $20.00

3. Returned checks - $20.00

4. Staff time - $40.00/hour

5. Equipment - $30.00/hour

6. Vehicle - $20.00/hour

7. Researcher - $5.00/hour

8. Photo copy - $ .10/each

9. Fee collection - $10.00

R651-611-5. Reservations.

A. Camping Reservation Fees.

1. Individual Campsite $8.00

2. Group site or building rental $10.25

3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
August 21, 2007 **63-11-17(8)**
Notice of Continuation February 13, 2006

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (a) may still be considered valid if the application is timely corrected through the application correction process.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit

is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn permits are not limited entry, premium limited entry or cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-8. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-12. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-21; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns only during the shed antler and shed horn season published in the Bucks, Bulls, Once-in-a-Lifetime, Proclamation of the Wildlife Board for taking big game.

(b) No permit, license or Certificate or Registration is required to gather shed antlers and shed horns.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information

shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime Permits and Management Bull Elk, and Application Process for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) a person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(2)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person who applies for, or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

(3) Applications are available from license agents, division offices, and through the division's Internet address.

(4) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(5) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(6) A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general any weapon buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.

(7) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(8)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The nonrefundable handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(10) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(11) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-27(4).

(12) To apply for a resident permit, a person must be a resident at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) the nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the nonrefundable handling fee, if applying only for a bonus point; and

(e) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the nonrefundable handling fee; or

(b) the nonrefundable handling fee per species, if applying only for a preference point; and

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) People may not apply together for management bull elk permits in the big game drawing as provided in R657-5-71(2)(b).

(c) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.

(d) Up to ten people may apply together for general deer permits in the big game drawing.

(e) Youth applicants who wish to participate in the youth general buck deer drawing process as provided in Subsection R657-5-27(4), or the youth antlerless drawing process as provided in Subsection R657-5-59(3), must not apply as part of a group.

(2)(a) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(b) If the appropriate box is not filled out with the number of hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Drawings, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Application Refunds, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants who applied in the big game drawing with a check or money order will receive a permit refund in May.

(2)(a) Unsuccessful applicants who applied in the big game drawing with a credit or debit card will not be charged for a permit.

(b) Unsuccessful applicants who applied as a group will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees and Utah hunting or combination license fees are nonrefundable.

R657-5-29. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may

not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless deer, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a premium limited entry, limited entry, management bull elk or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(4) The waiting period imposed on a management bull elk permit will be removed if:

(a) the hunter complies with the mandatory reporting requirements in R657-5-71(6), and the animal harvested has five points or less on at least one antler.

R657-5-32. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding two years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of two years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-33. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-34. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-35. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-30 through R657-5-34 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-36. Waiting Periods for Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-37A. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited entry permits in the big game or antlerless drawing; or

(ii) each valid application when applying for bonus points in the big game or antlerless drawing.

(b) Bonus points are awarded by species for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry, management bull elk, and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) all once-in-a-lifetime species; and

(v) antlerless moose.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry, management and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit;

(iv) antlerless moose, and

(b) only one once-in-a-lifetime, including once-in-a-lifetime cooperative wildlife management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

(d) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(e) A person may only apply for bonus points in the big game and antlerless drawings.

(f) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and

species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points may be reinstated if a hunter obtains a management bull elk permit and complies with R657-5-71(7).

(10) Bonus points are not transferable.

(11) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(12)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain paper copies of applications for three years prior to the current big game and antlerless drawings for the purpose of researching bonus point records.

(c) The division shall retain electronic copies of applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

R657-5-37B. Preference Point System.

(1) Preference points are used in the big game and antlerless drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid unsuccessful application when applying for a general buck deer, antlerless deer, antlerless elk, or doe pronghorn permit; or

(ii) each valid application when applying only for a preference point in the big game or antlerless drawing.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits after the big game or antlerless drawing.

(4) Preference points are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk or doe pronghorn permit through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game and antlerless drawing.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The division shall retain copies of paper applications for three years prior to the current big game and antlerless drawings for the purpose of researching preference point records.

(c) The division shall retain copies of electronic applications from 2000 to the current big game drawing for the purpose of researching preference point records.

(d) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer statewide within a general hunt area published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the

opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-39. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;
(ii) the appropriate archery equipment is used if hunting with an archery permit;
(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.
(b)(i) General archery deer;
(ii) general muzzleloader deer;
(iii) limited entry archery deer; or
(iv) limited entry muzzleloader deer.

R657-5-43. General Archery Elk Hunt.
(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:
(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;
(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units;
(iii) one elk of hunter's choice on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, Nebo-West Desert, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).
(b) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.
(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.
(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).
(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. General Season Bull Elk Hunt.
(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:
(a) Salt Lake County south of I-80 and east of I-15; and
(b) elk cooperative wildlife management units.
(2)(a) A person may purchase either a spike bull permit or an any bull permit.
(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.
(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.
(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.
(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-45. General Muzzleloader Elk Hunt.
(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:
(a) Salt Lake County south of I-80 and east of I-15; and
(b) elk cooperative wildlife management units.
(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.
(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.
(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.
(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-46. Youth General Any Bull Elk Hunt.
(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
(b) A youth may apply for or obtain a youth any bull elk permit.
(c) A youth may only obtain a youth any bull elk permit once during their youth.
(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.
(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.
(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).
(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-47. Premium Limited Entry and Limited Entry Bull Elk Hunts.
(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.
(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all limited entry bull elk seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.
(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk

permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt when only archery equipment may be used and on buck pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-51. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A Henry Mountain cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-56. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;
(b) antlerless elk;
(c) doe pronghorn; and
(d) antlerless moose, if permits are available during the current year.

(4) A youth may apply in the antlerless drawing as provided in Subsection (3) or Subsection R657-5-59(3).

(5) Any person who has obtained a pronghorn permit, or a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(6) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(7) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsection R657-5-59(4) and Section R657-5-61.

(8)(a) Applications must be submitted online by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-58. Fees for Antlerless Applications.

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-59. Antlerless Big Game Drawing.

(1) The antlerless drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-57; and

(ii) not apply as a group.

(d) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees are nonrefundable.

R657-5-61. Over-the-Counter Permit Sales After the Antlerless Drawing.

Permits remaining after the drawing will be sold beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game on a first-come, first-served basis from division offices, through participating online license agents, and through the mail.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime and management bull elk, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking big game.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking big game.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-63. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for

the pertinent species.

R657-5-64. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-37. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-63 through R657-5-68.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for;

(b) a nonrefundable handling fee: and

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 calendar days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

R657-5-66. Special Hunt Drawing.

(1) The special hunt drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-67. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-68. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-69. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-70. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and

receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-71. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management bull elk permits.

(3) Waiting periods as provided in R657-5-31 are incurred as a result of obtaining management bull elk permits, except as provided in Subsection (7).

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management bull elk permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management bull elk permit in the big game drawing, except as provided in Subsection (7).

(5) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a), and have their animal inspected by the division, will have their bonus points reinstated and waiting period for limited bull elk removed.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 72 hours of leaving the hunting area.

(8) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

R657-5-72. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-42, and

(b) antlerless elk, as provided in Subsection R657-5-48.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

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R657. Natural Resources, Wildlife Resources.
R657-6. Taking Upland Game.
R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation of the Wildlife Board for taking upland game.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Falconry" means the sport of taking quarry by means of a trained raptor.

(d) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(e) "Migratory game bird" means, for the purposes of this rule, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(f) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(g) "Upland game" means pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, White-tailed Ptarmigan, and the following migratory game birds: Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the proclamation of the Wildlife Board for taking upland game to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to possess a hunting or combination license with the HIP registration number recorded on the license, demonstrating they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

(i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

(ii) Sage-grouse without first obtaining a Sage-grouse permit;

(iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

(iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the proclamation of the Wildlife Board for taking upland game, if any permits are remaining.

(2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the proclamation of the Wildlife Board for taking upland game.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sage-grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sage-grouse permit request forms must be submitted with a handling fee.

(3)(a) A limited number of two-bird, Sharp-tailed Grouse permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sharp-tailed Grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sharp-tailed Grouse permit request forms must be submitted with a handling fee.

(4)(a) Band-tailed Pigeon and White-tailed Ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

(5) Sage-grouse, Sharp-tailed Grouse, Band-tailed Pigeon and White-tailed Ptarmigan permit forms are available from Division offices and through the Division's Internet address.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Applications will be available from Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Late applications, received by the date published in the proclamation of the Wildlife Board for taking upland game, will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the proclamation of the Wildlife Board for taking upland game, shall not be processed and shall be returned to the applicant.

(4) Group applications for Sandhill Crane will not be accepted.

(5)(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person may not apply more than once annually.

(6) Each application must include:

(a) a nonrefundable handling fee; and

(b) the hunting or combination license fee, if it has not yet been purchased.

(7) A hunting or combination license may be purchased before applying, or the hunting or combination license will be issued upon successful drawing results. Fees must be submitted with the application.

(8) The posting date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

(9) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(10) To apply for a resident permit or license, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

(12)(a) An applicant may withdraw their application for the Sandhill Crane Drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) An applicant may reapply in the Sandhill Crane Drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fee will not be refunded.

(13)(a) An applicant may amend their application for the Sandhill Crane Drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-6-6. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic;

(iii) a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted;

(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in Rule R657-5; and

(v) Sandhill Crane may be taken with any size of nontoxic shot.

(b) Crossbows are not legal archery equipment for taking upland game, except as provided in Rule R657-12.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-6-7. Nontoxic Shot.

(1) Only nontoxic shot may be used to take Sandhill Crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill Crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-8. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Bud Phelps, Castle Dale, Huntington, James Walter Fitzgerald, Mallard Springs, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-9. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-10. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) Pheasant and quail may not be taken prior to 8 a.m. on the opening day of the pheasant and quail seasons.

(3) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-11. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-12. Falconry.

(1)(a) Falconers must obtain an annual hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

R657-6-13. Baiting.

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill Crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-6-14. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads that are posted open.

R657-6-15. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-16. Tagging Requirements.

(1) The carcass of a Sandhill Crane, sage grouse, or Sharp-tailed Grouse must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill Crane, sage grouse, or Sharp-tailed Grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-17. Identification of Species and Sex.

One fully feathered wing must remain attached to each upland game bird and migratory game bird taken while it is being transported to allow species identification.

R657-6-18. Waste of Upland Game.

A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the animal.

R657-6-19. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-20. Use of Dogs.

(1) Dogs may be used to locate and retrieve upland game during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

(3) State wildlife management and waterfowl management areas are listed under Sections R657-6-9 and R657-6-10.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, Syracuse City, West Jordan, and West Valley City are closed to the discharge

of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas and federal refuges are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-22. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or aid of live decoys, recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds.

R657-6-23. Shipping or Exporting.

(1) No person may transport upland game by the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

R657-6-24. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-25. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

KEY: wildlife, birds, rabbits, game laws
August 7, 2007 23-14-18
Notice of Continuation July 8, 2005 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Common Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Live decoys" means tame or captive ducks, geese or other live birds.

(d) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(e) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(f) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(g) "Transport" means to ship, export, import or receive or deliver for shipment.

(h) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(i) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person 12 through 15 years of age.

R657-9-4. Permit Applications for Swan.

(1) Applications for swan permits are available from license agents, division offices, and through the division's Internet address. Residents and nonresidents may apply.

(2)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fees submitted with the application shall be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be processed and will be returned.

(4) A person may obtain only one swan permit each year

(5) A person may not apply more than once annually.

(6) Group applications are not accepted.

(7) A Utah hunting or combination license may be purchased before applying, or the hunting or combination license will be issued to the applicant upon successfully drawing a permit.

(8) Each application must include:

(a) a nonrefundable handling fee; and

(b) the Utah hunting or combination license fee, if the license has not yet been purchased.

R657-9-5. Drawing.

(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).

(b) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) Handling fee will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-9-6. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-7. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

R657-9-8. Purchase of License by Mail.

(1) A person may purchase a hunting or combination license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-9-9. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

R657-9-10. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-11. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-13. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-14. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-15. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-16. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-17. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

R657-9-18. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-19. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-20. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-21. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-22. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-23. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-24. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-25. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-26. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-27. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-28. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;
(ii) the location where taken;
(iii) the date such birds were received;
(iv) the name and address of the person from whom such birds were received;
(v) the date such birds were disposed of; and
(vi) the name and address of the person to whom such birds were delivered; or
(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.
(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.
(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-29. Importation.
A person may not:
(1) import migratory game birds belonging to another person; or
(2) import migratory game birds in excess of the following importation limits:
(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;
(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;
(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-30. Use of Dogs.
(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.
(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

R657-9-31. Season Dates and Bag and Possession Limits.
(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.
(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Closed Areas.
(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.
(2) A person may not participate in activities that are posted as prohibited.
(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:
(a) Brown's Park - That part adjacent to headquarters.
(b) Clear Lake - Spring Lake.
(c) Desert Lake - That part known as "Desert Lake."
(d) Farmington Bay - Headquarters area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.
(e) Ogden Bay - Headquarters area.
(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."
(g) Salt Creek - That part as posted known as "Rest Lake."
(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.
(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.
(j) State Parks
Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.
(k) Great Salt Lake Marina and adjacent areas as posted.
(l) Millard County
Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.
(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-33. Shooting Hours.
(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.
(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-34. Falconry.
(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.
(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-35. Migratory Game Bird Harvest Information Program (HIP).
(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.
(2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.
(b) A person must write their HIP registration number on their current year's hunting license.
(3) Any person obtaining a HIP registration number will be required to provide their:
(a) hunting license number;
(b) hunting license type;
(c) name;
(d) address;
(e) phone number;
(f) birth date; and
(g) information about the previous year's migratory bird hunts.
(4) Lifetime license holders will receive a sticker every

three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-36. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

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R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Limited entry hunt" means any hunt listed in the hunt tables of the proclamation of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(h) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(i) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(j) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(k) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain a valid cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Purchase of Permit by Mail.

(1) A person may obtain a cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, proof of valid hunting or combination license or the corresponding fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

R657-10-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field,

woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar pursuit permit in possession while engaged in taking or pursuing cougar.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that

person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Survey.

Each permittee who is contacted for a survey about their cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-10-23. Taking Cougar.

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in proclamation of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the proclamation of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

(7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the proclamation of the Wildlife Board for taking cougar.

(b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-34 and 657-10-35.

R657-10-24. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

R657-10-25. Cougar Pursuit.

(1) Cougar may be pursued only by persons who have obtained a valid cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

(6) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. General Application Information.

(1) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(2) A person may not apply for or obtain more than one cougar permit for the same year.

(3) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

R657-10-27. Waiting Period.

(1) Any person who obtained a limited entry permit valid for the current season may not apply for a permit for a period of three seasons.

(2) Any person who draws a limited entry permit for the current season may not apply for a permit for a period of three seasons.

(3) Waiting periods are not incurred as a result of purchasing harvest objective permits.

R657-10-28. Application Procedure.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(3)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fee submitted with the application will not be refunded and the license will be issued. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-30.

(7) To apply for a resident permit, a person must establish residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

R657-10-29. Fees.

(1) Each application must include:

(a) the permit fee;

(b) the nonrefundable handling fee; and

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(2) Permits are mailed to successful applicants.

(3)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in December.

(b) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(c) The handling fees and Utah hunting or combination license fee are nonrefundable.

R657-10-30. Drawing and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of drawing results on the date published in the proclamation of the Wildlife Board for taking cougar. The drawing results will be posted on the division's Internet address.

(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits.

(4) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) Limited entry permits remaining after the drawing may be obtained on a first-come, first-served basis as provided in the proclamation of the Wildlife Board for taking cougar.

(6) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(7)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) Handling fees and Utah hunting or combination license fees will not be refunded.

(8)(a) An applicant may amend their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-10-31. Bonus Points.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application when applying for a limited entry permit in the cougar drawing; or

(b) a valid application when applying for a bonus point in the cougar drawing.

(2) bonus points are awarded only to applicants eligible to receive a limited entry cougar permit and consistent with subsection (1).

(3) The purchase of a harvest objective permit will not affect bonus points.

(4)(a) A person may apply for one cougar bonus point each year, except a person may not apply in the drawing for both a limited entry cougar permit and a cougar bonus point in the same year.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

(5)(a) Each applicant receives a random drawing number for:

(i) the current valid limited entry cougar application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(6)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(7) Bonus points are forfeited if a person obtains a limited entry cougar permit except as provided in Subsection (7).

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a Conservation Permit; or

(b) a person obtains a harvest objective cougar permit.

(9) Bonus points are not transferable.

(10) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

R657-10-32. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for

that specified management unit.

R657-10-33. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-34. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the cougar management unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the cougar harvest objective for that unit is met; or

(b) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-35. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-36. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

R657-10-37. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more that 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

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R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(c) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(d) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(e) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(f) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(g) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(h) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(i) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(j) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(k) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(l) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(m) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(n) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(o) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(p) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(q) "Motor" means an electric or internal combustion engine.

(r) "Nongame fish" means species of fish not listed as game fish.

(s) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, or any other place of storage.

(t) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(u) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(v) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(w) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(x) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(y) "Single hook" means a hook or multiple hooks having a common shank.

(w) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(z) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(aa)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(bb) "Underwater Spearfishing" means, fishing by a person swimming or diving and using a mechanical device held in the hand, which uses a rubberband, spring, or pneumatic power to propel a spear to take fish.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, the second Saturday of June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full bag and possession limit.

R657-13-4. Fishing Contests.

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or

substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 11 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests as provided in Subsection (1)(a) must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow larger or smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Reciprocal Fishing Permits.

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one bag limit may be taken and held in possession even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Only Utah and Arizona residents are allowed to purchase reciprocal permits to fish both sides of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except when using a valid second pole permit in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license, or while fishing for crayfish without the use of fish hooks. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir or Lake Powell.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With a Second Pole.

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily bag or possession limit.

(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline

fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to a valid Utah one day, seven day or annual fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Joe's Valley Reservoir, Ken's Lake, Lake Powell, Lost Creek Reservoir, Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, and Willard Bay Reservoir are open to taking game fish by means of underwater spearfishing from June 1 through September 30. These are the only waters open to underwater spearfishing for game fish.

(4) Lake Powell is open to taking carp and striped bass by means of underwater spearfishing from January 1 through December 31.

(5) The bag and possession limit for underwater spearfishing is two game fish. No more than one fish greater than 20 inches may be taken, except at Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

(6) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsections (3) and (4) above and as provided in Section R657-13-14.

(7) Carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1)(a) Fishing is permitted with any bait, except corn, hominy, or live fish.

(b) Possession or use of corn or hominy while fishing is unlawful.

(2) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(3) Game fish or their parts may not be used, except for the following:

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake and Willard Bay reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) The eggs of any species of fish, except prohibited fish, may be used. However, eggs may not be taken or used from fish that are being released.

(4) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(5) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);
(b) Bluehead sucker (Catostomus discobolus);
(c) Colorado pikeminnow (Ptychocheilus lucius);
(d) Flannelmouth sucker (Catostomus latipinnis);
(e) Gizzard shad (Dorosoma cepedianum);
(f) Grass carp (Ctenopharyngodon idella);
(g) Humpback chub (Gila cypha);
(h) June sucker (Chasmistes liorus);
(i) Least chub (Iotichthys phlegethontis);
(j) Leatherside chub (Snyderichthys copei);
(k) Razorback sucker (Xyrauchen texanus);
(l) Roundtail chub (Gila robusta);
(m) Virgin River chub (Gila seminuda);
(n) Virgin spinedace (Lepidomeda mollispinis); and
(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, dipnets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3).

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1) Fish held in possession in the field or in transit shall be kept in such a manner that:

(a) the species of fish can be readily identified;

(b) the number of fish can be readily counted;

(c) the size of the fish can be readily measured when the fish are taken from waters where size limits apply and the fish taken from those waters may not be filleted and the heads or tails may not be removed; and

(d) fillets shall have attached sufficient skin to include the conspicuous markings so species may be identified.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Bag and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, bag and possession

limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

KEY: fish, fishing, wildlife, wildlife law

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Notice of Continuation September 20, 2002	**23-14-19**
	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-17. Lifetime Hunting and Fishing License.
R657-17-1. Purpose and Authority.

(1) Under authority of Section 23-19-17.5, this rule provides the requirements and procedures applicable to lifetime hunting and fishing licenses.

(2) In addition to the provisions of this rule, a lifetime licensee is subject to:

(a) the provisions set forth in Title 23, Wildlife Resources Code of Utah; and

(b) the rules and proclamations of the Wildlife Board, including all requirements for special hunting and fishing permits and tags.

(3) Unless specifically stated otherwise, lifetime licensees shall be subject to any amendment to this rule or any amendment to Section 23-19-17.5.

R657-17-2. Definitions.

Terms used in this rule are defined in Section 23-13-2 and Rule R657-5.

R657-17-3. Lifetime License Entitlement.

(1)(a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual hunting, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements as provided in Subsection R657-17-1(2).

(2) Each year, a lifetime licensee who is eligible to hunt big game may receive without charge, a permit and tag for the region of their choice for one of the following general deer hunts:

(i) archery buck deer;

(ii) any weapon buck deer; or

(iii) muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

(6)(a) Lifetime license holders may participate in the Dedicated Hunter Program.

(b) Upon entering the Dedicated Hunter Program, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5 during enrollment in the Dedicated Hunter Program.

(7)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5 during the year the general any weapon buck deer and bull elk combination permit is valid.

R657-17-4. General Deer Permits and Tags.

(1)(a) The division shall send a reminder postcard to each lifetime licensee, who is eligible to hunt big game, prior to the beginning of the annual bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The lifetime licensee shall, prior to the end of the annual bucks, bulls and once-in-a-lifetime application period:

(i) complete and submit an online Lifetime Questionnaire through the division's web site; or

(ii) complete and submit a paper Lifetime Questionnaire to the address indicated on the questionnaire.

(iii) Blank questionnaires are available online at the division's web site or from any division office.

(2)(a) Except as provided in Subsection (e) and Subsection (f), the division may not issue a permit to any lifetime licensee who was given reasonable notice of the deadline as provided in Subsection (1)(b) and fails to submit a complete and accurate Lifetime Questionnaire to the division.

(b) If an error is found on the Lifetime Questionnaire, submitted online or through the mail, the lifetime licensee may receive a correction letter. Corrections by the lifetime licensee can only be made using the personalized and numbered correction letter. Corrections must be mailed to the address on the correction letter and received no later than the date indicated on the letter. The opportunity to correct an error is not guaranteed.

(c) The division reserves the right to:

(i) contact the lifetime licensee to correct the error; or

(ii) correct the lifetime licensee's choice of general deer permits without sending a correction letter.

(d) If the division is unable to contact the lifetime licensee and correct the error, the lifetime licensee may not receive a permit, except as provided in Subsection (f).

(e) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the deadline as provided in Subsection (1)(a).

(f) If a lifetime licensee fails to submit a Lifetime Questionnaire by the deadline as provided in Subsection (1)(b), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

(3) As used in this section "reasonable notice" means that a reminder postcard was sent within a reasonable time before the deadline as provided in Subsection (1)(b) to the most recent address given to the division by the lifetime licensee.

(4) Lifetime licensees shall receive a letter from the division confirming the information received on the Lifetime Questionnaire.

(5) Lifetime licensees must notify the division of any change of mailing address, residency, address, telephone number, physical description, or driver's license number.

(6)(a) Lifetime licensees may apply for or obtain general deer preference points or permits through the big game general buck deer drawing as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, provided the lifetime licensee waives their choice of general deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(b) If a lifetime licensee applies for and does not obtain a general deer permit through the big game general buck deer drawing, the lifetime licensee may only obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

R657-17-5. Applying for Limited Entry Permits in the Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) A lifetime licensee may apply for a limited entry permit offered through the bucks, bulls and once-in-a-lifetime drawing using a bucks, bulls and once-in-a-lifetime application published by the division.

(2) Limited entry permit species and application procedures are provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3)(a) If the lifetime licensee applies for and is successful in obtaining a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, a general deer permit will not be issued.

(b) If the lifetime licensee does not draw a premium

limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, the general deer permit requested on the Lifetime Questionnaire shall be issued.

(4) Applying for or obtaining an antlerless deer, antlerless elk, or doe pronghorn permit does not affect eligibility for obtaining a general buck deer permit.

(5) All rules established by the Wildlife Board regarding the availability of big game permits in relation to obtaining general deer permits shall apply to lifetime licensees.

R657-17-6. Hunter Education Requirements -- Minimum Age for Hunting.

(1) The division shall issue a lifetime licensee only those licenses, permits, and tags for which that person qualifies according to the hunter education requirements, age restrictions specified in this Section and Title 23, Wildlife Resources Code of Utah, and suspension orders of a division hearing officer.

(2)(a) Lifetime licensees born after December 31, 1965, must be certified under Section 23-19-11 to engage in hunting.

(b) Proof of hunter education must be provided to the division by the lifetime licensee.

(3) Age requirements to engage in hunting are as follows:

(a) A lifetime licensee must have completed a valid hunters education course to hunt.

(b) A lifetime licensee must be 12 years of age or older to hunt big game.

R657-17-7. Change of Residency.

(1) A lifetime hunting and fishing license shall remain valid if the licensee changes residency to another state or country.

(2)(a) A lifetime licensee who no longer qualifies as a resident under Section 23-13-2 shall notify the division within 60 days of leaving the state.

(b) The division shall issue the lifetime licensee a new lifetime hunting and fishing license with the change of address after the lifetime licensee surrenders the lifetime hunting and fishing license with the previous address.

(3) A lifetime licensee who does not qualify as a resident shall purchase the required nonresident permits or tags required for hunting, except as provided in Subsection R657-17-3(2).

R657-17-8. Lost or Stolen Lifetime Hunting and Fishing License.

(1) If a lifetime hunting and fishing license is lost or stolen, a duplicate may be obtained from any division office.

(2) The lifetime licensee shall:

(a) present a valid driver's license, identification card, birth certificate, or other form of proper identification;

(b) sign an affidavit stating the lifetime hunting and fishing license was lost or stolen; and

(c) pay a duplicate lifetime hunting and fishing license fee.

KEY: wildlife, game laws, hunting and fishing licenses
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23-19-11

R657. Natural Resources, Wildlife Resources.
R657-26. Adjudicative Proceedings for a License, Permit, or Certificate of Registration.
R657-26-1. Purpose and Authority.

Under authority of Subsection 23-19-9(14), this rule provides the procedures and standards for:

(1) the suspension of the privilege of applying for, purchasing and exercising the benefits conferred by a license or permit; and

(2) the suspension of a certificate of registration.

R657-26-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Intentionally" as defined in Section 76-2-103.

(b) "Knowingly" as defined in Section 76-2-103.

(c) "Party" means the division, Wildlife Board, or respondent.

(d) "Presiding officer" means the hearing officer appointed by the division director to conduct suspension proceedings.

(e) "Recklessly" as defined in Section 76-2-103.

(f) "Respondent" means a person against whom a suspension proceeding is initiated.

(g) "Single Criminal episode" means all conduct, which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective as defined in 76-1-401.

R657-26-3. Commencement of Suspension Proceedings.

(1)(a) Each adjudicative proceeding shall be commenced by the presiding officer filing a notice of agency action.

(2) The notice of agency action shall be filed and served according to the requirements provided in Section 63-46b-3(2).

(3) All suspension proceedings conducted by the presiding officer are designated as informal adjudications. The presiding officer may convert the hearing to a formal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

R657-26-4. Procedures for Suspension Proceedings.

(1)(a) An answer or other pleading responsive to the allegations in the notice of agency action does not need to be filed by the respondent.

(b) If an answer to the notice of agency action is filed, the answer shall include:

(i) the name of the respondent;

(ii) the case number or other reference number;

(iii) the facts surrounding the allegations;

(iv) a response to the allegations that the violation was committed knowingly, intentionally or recklessly; and

(v) the date the answer was mailed.

(2) The respondent may access any relevant information contained in the division's files and all materials and information gathered in the investigation of the respondent, to the extent permitted by law.

(3) Discovery and intervention is prohibited.

R657-26-5. Hearings.

(1)(a) The presiding officer shall provide the respondent with an opportunity for a hearing.

(b) A hearing shall be held if the division receives a written request for a hearing from the respondent within 20 calendar days after the date the notice of agency action is issued.

(2) The respondent, or a person designated by the respondent to appear on the respondent's behalf, may testify at the hearing and present any relevant information or evidence.

(3) Hearings shall be open to the public.

(4) After reviewing all the information provided by the parties, the presiding officer may suspend the respondent's license, permit or certificate of registration privileges in accordance with Section 23-19-9.

(5)(a) The type of license, permit or certificate of registration privilege suspension imposed shall be within the following categories:

(i) all fishing licenses and permits;

(ii) all furbearer and bobcat licenses and permits;

(iii) all hunting licenses and permits for big game;

(iv) all hunting licenses and permits for small game and wild turkey permits. Any person suspended for small game will be eligible to purchase an alternate hunting license to apply for and obtain big game, cougar, and bear permits but will not be issued a hunting license valid to take small game;

(v) all permits to take and pursue cougar and bear;

(vi) all falconry permits and falconry certificates of registration;

(vii) certificates of registration of a type specified; or

(viii) all hunting licenses, permits and certificates of registration;

(ix) all licenses, permits and certificates of registration issued by the division.

(b) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity for which the person was participating in when the violation occurred.

(c) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity that involved the unlawful taking of protected wildlife for which no season has been established.

(d) If the violation involves acts that occurred while participating in an activity regulated by Title 23, which include more than one of the types of license or permit privileges as provided in Subsection (a), the presiding officer may suspend the license, permit or certificate of registration privileges for all categories that apply.

(e) The presiding officer may impose a suspension of all privileges to hunt protected wildlife or all privileges to take protected wildlife if the violations are found by the presiding officer to be conspicuously bad or offensive. This may include, but are not restricted to, the violations described in Subsection (e)(i) through Subsection (e)(viii).

(i) Any violation which could result in suspension that involves taking, in a single criminal episode, four times the legal bag limit of any protected fish species.

(ii) Any violation which could result in suspension that involves taking, in a single criminal episode, three times the legal bag limit of any small game species or waterfowl.

(iii) Any violation which could result in suspension that involves a once-in-a-lifetime species.

(iv) Any violation which could result in suspension that occurs out of season or in a closed area for the species illegally taken and involves a trophy animal.

(v) Three or more felony or class A misdemeanor violations under Section 23-20-4 in a seven-year period, regardless of suspension periods previously imposed.

(vi) Any violation which could result in suspension that involves the unlawful taking, in a single criminal episode, of two or more big game animals.

(vii) Any violation which could result in suspension that involves the unlawful taking, in a single criminal episode, of two or more cougar or bear.

(viii) Any violation subject to Section 23-19-9 that further violates an existing order of revocation or suspension recognized by the Utah Division of Wildlife Resources.

(ix) Any violation which involves the unlawful taking of big game for pecuniary gain.

(6) The director shall appoint a qualified person as a presiding officer in accordance with Section 23-19-9(9).

(7) The presiding officer may suspend privileges to take protected wildlife up to but not to exceed the limits as defined in Utah Code Sections 23-19-9-(4) and (5). The presiding officer will take into account any aggravating or mitigating circumstances when deciding the length of a suspension period.

(8) The presiding officer may suspend privileges based on two or more separate criminal episodes either concurrently or consecutively.

(9) The presiding officer may suspend privileges previously suspended by a court, presiding officer or the Wildlife Board either concurrently or consecutively.

(10) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration in accordance with Section 23-19-9(10).

(11) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

R657-26-6. Issuance of Decision and Order.

(1) Within a reasonable time after the close of the adjudicative proceeding, the presiding officer shall issue a signed, written order that states:

(a) the decision;

(b) the reasons for the decision;

(c) a notice of any right of administrative review available to the parties; and

(d) the time limits for filing an appeal or requesting a review.

(2) The decision and order shall be based on facts appearing in division files and on the testimony and facts presented in evidence at the hearing.

(3)(a) A copy of the decision and order shall be promptly mailed to all parties.

(b) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

R657-26-7. Default.

(1) The presiding officer may enter an order of default against the respondent if the respondent fails to participate, either in writing or in person, in the adjudicative proceeding.

(2) Upon considering the order of default, the presiding officer shall review the investigative file to determine the elements for suspension are satisfied and shall issue and order of default that:

(a) include a statement of the grounds for default;

(b) makes a finding of all relevant issues required in Utah Code Section 23-19-9; and

(c) mail a copy of the order to all parties.

(i) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

(3)(a) A defaulted party may seek to have the presiding officer set aside the default order, and any order in the adjudicative proceeding issued subsequent to such default, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default order and any subsequent order shall be made in writing to the presiding officer.

(c) A defaulted party may seek Wildlife Board Review under Section R657-26-8 only on the decision of the presiding officer on the motion to set aside the default.

R657-26-8. Wildlife Board Review - Procedure.

(1)(a) A person may file an appeal of a presiding officer's decision with the Wildlife Board.

(b) The appeal must be in writing and the respondent shall send a copy of the appeal by mail to the chair of the Wildlife Board and each of the parties.

(2) The appeal must be received within 30 calendar days after the issuance of the presiding officer's decision and order.

(3) The appeal shall:

(a) be signed by the respondent or the respondent's legal counsel;

(b) state the grounds for appeal and the relief requested; and

(c) state the date upon which it was mailed.

(4)(a) Within 30 calendar days after the mailing date of the appeal, any party may file a written response with the Wildlife Board.

(b) A copy of the response shall be sent by mail to the chair of the Wildlife Board and each of the parties.

(5) The Wildlife Board may hold a de novo formal hearing in accordance with the provisions of Section 63-46b-6 through Section 63-46b-10. The Wildlife Board may convert the hearing to an informal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(6) At the conclusion of the hearing, the Wildlife Board may:

(a) affirm the decision;

(b) vacate or remand the decision;

(c) amend the type of suspension ordered by the presiding officer; or

(d) amend the suspension period not to exceed the statutory maximums.

(7) The Wildlife Board chair may vote in an adjudicative proceedings decision, and any Wildlife Board decision shall be supported by a majority of the voting members present.

(8)(a) Within a reasonable time after the close of the formal hearing, the chair of the Wildlife Board shall issue a written order that affirms, vacates or remands the decision or amends the type of suspension ordered by the hearing officer.

(b) The order on review shall be signed by the chair of the Wildlife Board and mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute permitting review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) whether the decision of the presiding officer is to be affirmed, reversed, modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vi) a notice of any right of further administrative reconsideration; and

(vii) the time limits applicable to any review.

R657-26-9. Reinstatement of a License, Permit, or Certificate of Registration.

(1) A presiding officer may reinstate a person's license, permit, or certificate of registration suspended under Section 23-19-9.5 upon receiving a written request for reinstatement.

(2) The person making the request shall include:

(a) the person's name, phone number, and mailing address;

(b) the number of the license, permit, or certificate of registration that was suspended or revoked;

(c) the date the violation occurred;

(d) the date the request was mailed;
(e) the state in which the violation occurred;
(f) a copy of a receipt from the court where the violation was processed stating the violation is no longer outstanding; and
(g) the person's signature.

(3) Within a reasonable time of receiving the request, the presiding officer shall issue a written order stating whether the request is granted or denied and the reasons for the decision.

(4) If a presiding officer denies a person's request for reinstatement, the person may submit a request for reconsideration by following the procedures provided in Section 63-46b-13.

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23-19-9
23-20-14
63-46b-13
63-46b-5

R657. Natural Resources, Wildlife Resources.
R657-28. Use of Division Lands.
R657-28-1. Purpose and Authority.

(1) Pursuant to Utah Code Section 23-14-8 and Section 23-21-2.1, this rule defines:

(a) lawful uses and activities on division lands; and

(b) the application procedures and administration on division lands for rights-of-way; grazing permits; agricultural leases; leases; special use permits; seed harvesting; wood products removal; water uses; and sand, gravel, and cinder extraction.

(2) The division may approve a land use only if, in the opinion of the division, such use does not unreasonably conflict with the intended use of the land or is not detrimental to wildlife or wildlife habitat; and the impacts can be avoided, minimized, rectified, or compensated.

(3) The division may not authorize a land use under this rule without first obtaining the approval of the persons or entities, if any, holding contractual or proprietary interests in the subject property.

(4) Nothing in this rule shall prevent the division from closing division lands to public-use or activity if the division determines that the disturbance from the use or activity is detrimental to wildlife or wildlife habitat.

(5) The division's habitat section is primarily responsible for the management responsibilities of division lands and waters, including the processing of all contracts, permits, and other agreements.

R657-28-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agricultural lease" means any lease given for purposes of cultivating crops of any kind.

(b) "Christmas tree" means any pinyon or juniper tree; or other species that the division may so designate on a subject property; or any part thereof cut and removed from the place where it was grown, without the foliage being removed.

(c) "Commercial gain" means compensation in money, services, or other valuable consideration as part of a scheme or effort to generate income or financial advantage.

(d) "Compensatory Mitigation" means the replacement or substitution of resources or environments cumulatively impacted by a proposed action or cumulative proposed actions.

(e) "Cord" means a unit of cut firewood equal to a stack 4x4x8 feet or 128 cubic feet.

(f) "Division lands" means all land and waters owned by the division, or managed by the division under written agreement. When lands or waters owned by other parties are managed by the division under written agreement, and the terms of the agreement conflict with this Rule, the agreement shall govern.

(g) "Firewood" means any portion of a dead and fallen tree not included in any other definition of this section.

(h) "Grassbank" means forage reserved on a particular division property to be used as in-kind trade for conservation actions on public or private lands, emergency forage for division grazing permittees, or any other purpose designated by the division.

(i) "In-Kind Compensation" means anything paid or given in goods, commodities, or services in lieu of money, that is done on, affixed to, invested in, or beneficial to division property for the purpose of wildlife habitat maintenance or improvement, or other wildlife-related projects.

(j) "Lease" means an agreement that authorizes use of division land for a specified term, purpose, and for a specified fee or in-kind compensation, or a combination thereof.

(k) "Livestock Operator" means any individual or entity that owns or manages domestic livestock.

(l) "Organized Event" means any event in which registration fees are collected, commercial gain may occur, prizes are awarded for competition, an enrollment or participation list is created, or a group is assembled as part of a club or organizational activity.

(m) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.

(n) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.

(o) "Right-of-way Lease" means a lease for an easement or right-of-way for a specific use of division land including, but not limited to, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails.

(p) "Sand, Gravel, Cinders, and Ornamental Rock" means common varieties of sand, gravel, volcanic cinder, or ornamental rock separate and distinct from the mineral estate on division lands.

(q) "Seed Harvesting" means the gathering of any seed on division property for any purpose.

(r) "Special use permit" means a temporary authorization for a specific, non-depleting land use, including seismic or land surveys, research sites, organized activity, or physical access on division lands.

(s) "Wood product" means any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.

R657-28-3. Management of Division Lands.

The division manages division lands and water rights to directly or indirectly protect and improve wildlife habitats and watersheds; increase fish and game populations to meet wildlife management plan objectives and expand fishing and hunting opportunities; conserve, protect, and recover sensitive wildlife species and their habitats; and provide wildlife-related recreational opportunities.

R657-28-4. Unlawful Uses and Activities on Division Lands.

(1) Except as authorized by statute, rule, contractual agreement, special use permit, certificates of registration, or public notice, a person, on division land, may not:

(a) remove, extract, use, consume or destroy any improvement or cultural or historic resource;

(b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;

(c) allow livestock to graze, except as allowed by permit;

(d) remove any plant or portion thereof for purposes of commercial gain;

(e) enter, use, or occupy division land when posted against such entry, use, or occupancy;

(f) enter, use, or occupy division land in group sizes greater than twenty-five (25) people;

(g) enter, use, or occupy division land while engaged in an organized event;

(h) use, occupy, destroy, move, or construct any structure including fences, water control devices, roads, surveys and section markers, or signs;

(i) prohibit, prevent, or obstruct public entry on division lands when such public entry is authorized by the division;

(j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies.

(k) solicit, promote, negotiate, barter, sell or trade any product or service on, or obtained from, division lands for commercial gain;

(l) park a motor vehicle or trailer or camp for more than 14

consecutive days unless posted for a different duration;

(m) light a fire without adequate provision to prevent spreading or leave a fire unattended;

(n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;

(o) use motorized vehicles of any kind except as authorized by declaration, management plan, or posting; or

(p) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.

(2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:

(a) the value of the resource removed, destroyed, or extracted;

(b) the amount of damage committed;

(c) the value of any losses suffered as a result of interference with authorized activities; and

(d) the consideration which would have been charged by the division for use of the land during the period of trespass, whichever is greater.

(3) The division's law enforcement section shall be primarily responsible for the investigation of any unlawful use of, or activity on, division lands.

(4) The division's law enforcement section shall be primarily responsible for the investigation of facts pertinent to filing for judicial remedy related to any unlawful use of, or activity on, division lands.

(5) The provisions of this Section do not apply to division employees or division volunteers while in the performance of their duties.

(6) Except as otherwise provided by statute, the criminal penalty for a violation of any provision of this Section is prescribed in Section 23-13-11.

R657-28-5. Domestic Livestock Grazing on Division Lands.

(1) The division may use domestic livestock grazing to manage vegetation on division lands if the division determines domestic livestock prescribed grazing is necessary for the maintenance or improvement of wildlife habitat on particular division properties.

(2) Domestic livestock grazing on division lands shall occur only under the permission, provisions, and authority given in a grazing permit issued by the division.

(3) Grazing permits may be issued by the division through a proposal solicitation process in accordance with R657-28-20 to achieve the division's vegetation or wildlife management goals.

(4) In the event an unanticipated prescribed grazing treatment is necessary for a division property, the division reserves the right to enter into contract with any livestock operator the division determines can provide the prescribed grazing treatment in a timely manner without soliciting competitive proposals; however, grazing permits issued under this paragraph shall not contain an option to renew and shall be limited to the current grazing season in duration.

(5) Grazing permits issued by the division shall include:

(a) The name, and a map, of the subject property to be grazed;

(b) A description of the desired vegetation community structure sought through the use of domestic livestock grazing;

(c) Identification of the type of domestic livestock needed to achieve the desired vegetation community structure;

(d) Identification of the key forage species for which utilization is to be measured;

(e) A description of the timing and intensity of utilization sought on key forage species that will achieve the desired vegetation community structure;

(f) The division's best estimate of the stocking density, period of grazing, and authorized forage harvesting stated in animal unit months that will achieve its vegetation management goals;

(g) A statement that the division may unilaterally suspend the grazing period if utilization goals for key forage species are met or exceeded prior to the end of the grazing period stated in the permit; or if events such as drought or fire make suspension necessary in order to prevent harm to the vegetation or wildlife resources.

(h) Identification of a reserved grass bank, if any, that the division may at its option offer as emergency forage for a permittee if the period of grazing set forth in the permit is suspended by the division.

(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the permittee and the division.

(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land.

(k) A statement assuring public access to division property by the permittee.

(l) A statement that the permittee is solely responsible for fence maintenance and control of permittee's livestock during the period of the permit.

(6) The division may at its option suspend domestic livestock grazing authorized under any permit prior to expiration of the permit's grazing period if the division determines the desired degree of utilization on the key forage species has been achieved.

(a) The division shall attempt to verbally notify the livestock operator and send written notification that utilization goals have been achieved and that domestic livestock grazing is suspended.

(b) The livestock operator shall remove its domestic animals within seven (7) days of the postmark date on the written notification of suspension.

(c) Animals remaining on division lands after the seven (7) day period will be considered in trespass.

(7) Compensation received by the division for grazing permits may be in-kind or monetary, or a combination of both, as specified by the division.

(8) The permittee is obligated to satisfy its compensation obligations regardless of whether the permittee uses the grazing permit or whether the provisions of the permit have been changed by the division.

(9) Compensation due from the permittee shall be pro-rated in cases where the division suspends the period of grazing or animal unit months set forth in the permit.

(10) The division may require compensation to be paid prior to livestock being placed on division land each year.

R657-28-6. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Termination of Grazing Permit.

(1) The division may unilaterally terminate a grazing permit at any time if the permittee has managed permittee's livestock in a manner that breaches the provisions of the grazing permit.

(a) If the livestock management of a permittee is sufficiently egregious as to defeat the vegetation management goals of a grazing permit, that livestock operator may be disqualified from applying in the future for grazing permits on division property.

(b) The division shall notify in writing any livestock operator disqualified from obtaining grazing permits.

(2) The division shall determine the degree to which a permittee has complied with the provisions of the grazing permit, and shall report to the permittee whether compliance

was satisfactory or unsatisfactory.

R657-28-7. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Option to Renew.

(1) Permits shall be issued for a term no greater than one year.

(2) Permittees who receive a satisfactory review for the previous year may have the option to renew the permit for the coming year provided the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat; except the division may at its discretion:

(a) Alter the provisions of the permit contract describing key forage species, timing, intensity, location, and duration of domestic livestock grazing if the division determines that such alteration will better achieve its vegetation management goals;

(b) Identify a different in-kind compensation on division property that is reasonably comparable in value to the in-kind compensation of the original grazing permit.

(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the permit to competitive bidding.

(c) Withdraw the subject property from domestic livestock grazing for any reason whatsoever.

(3) Should the terms of the original grazing permit be changed by the division, the permittee shall have the option to renew the permit.

(4) A permittee may hold a grazing permit on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the permit out to competitive proposal solicitation at the conclusion of the fifth year;

(5) The permittee having the grazing permit for the preceding ten years on a subject division property is entitled to submit a proposal for grazing the same division property if the permittee has not been disqualified from consideration as a permittee on division lands.

(6) The division reserves the right to issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.

R657-28-8. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Legal Effect.

(1) Grazing permits transfer no right, title, or interest in any lands or resources held by the division, nor any exclusive right of possession, and grant only the authorized utilization of forage.

(2) Permittees have no property rights in a grazing permit.

R657-28-9. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Range Improvement Projects.

(1) No range improvement project, including, but not limited to, the building of fences or corrals; structures used to impound, divert, or convey water claimed solely under a division water right; prescribed burning; seeding; chaining; harrowing; irrigation; etc., shall be conducted on division lands without the express written consent of the division.

(2) Range improvements, including fences, corrals, water works , etc., constructed on division property by permittee and which are affixed to the property shall be property of the division.

(3) Permittee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the permittee.

(4) All permittees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-10. Grazing of Domestic Livestock on Division Lands -- Trespass.

(1) Unauthorized livestock management activities on division land shall be considered trespass. These activities include, but are not limited to:

(a) The use of forage at times and at places not authorized in a permit.

(b) The placement of numbers of livestock on division land which, if left on the division land for the length of time allowed in the permit, would result in forage utilization in excess of that authorized by the permit.

(c) Grazing, staging, or trailing livestock on or across division land without a valid permit or publicly-recorded right-of-entry.

(d) The dumping of garbage or any other material on the division land.

(2) The permittee shall cooperate with the division in seeking judicial remedy against owners of trespass livestock on division lands for lost forage or other values.

R657-28-11. Grazing of Domestic Livestock on Division Lands -- Trailing and Staging Livestock Across or On Division Lands.

(1) Unless a party has a recorded right-of-way to trail livestock across division lands, prior written approval must be obtained from the division for trailing livestock across division lands.

(2) The authorization to trail livestock across division land shall restrict and limit the route, the number and type of animals, and the time and duration, (not to exceed two consecutive days).

(3) Staging of livestock on division lands is prohibited without the prior written consent of the division

R657-28-12. Grazing of Domestic Livestock on Division Lands -- Grassbanks.

(1) The division may designate specific properties as grassbanks for purposes of:

(a) Trading forage for habitat conservation actions on private or public lands;

(b) Providing emergency forage for a division grazing permittee when goals of domestic livestock impacts to vegetation have been achieved prior to the expiration of a permit's grazing period; or

(c) Any other purpose the division may identify.

(2) Provisions required for a grazing permit under R657-28-5(5) shall be defined for grassbank properties prior to their forage reserves being used.

(3) Nothing herein shall be construed to obligate the division to provide a grassbank or forage reserve when a grazing permittee is required by the division to suspend grazing prior to the expiration of the grazing period described in the permit, nor shall the division be required to utilize forage reserves under any other circumstance unless previously agreed to in writing by the division.

R657-28-13. Wood Products -- General Restrictions.

(1) A person may not cut or remove any wood product from division lands without obtaining the proper permit, tag, or contract and having the permit, tag, or contract in possession.

(2) A wood products collection contract or permit may be issued for a designated area and a specified period of time for:

(a) Removing trees;

(b) Harvesting Christmas trees; or

(c) Collecting firewood, posts, or ornamentals.

(3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.

(4) Permits are nontransferable and nonrefundable.

(5) Permittees must accompany wood products from the cutting site.

(6) Permits are available at the Salt Lake and regional offices.

(7) The division may set a maximum number of permits to harvest wood products on division lands.

R657-28-14. Wood Products -- Firewood Permits.

(1) A person may purchase one permit per year to collect firewood on division lands.

(2) A firewood permit allows a person to collect up to 2 cords of wood under the following conditions:

(a) Firewood collection is limited to felled trees on chained areas, except in designated live tree removal areas.

(b) A living or dead tree containing a nesting cavity may not be felled or collected.

(3) Firewood may be collected from May 1 through November 30 or as otherwise specified in the permit.

(4) The fee for a firewood permit is that which is set by the Utah Legislature yearly.

R657-28-15. Wood Products -- Christmas Tree Permits.

(1) A person may purchase one permit per year to cut a Christmas tree on division lands.

(2) A tag will be issued with each Christmas tree permit.

(3) Only pinyon pine, Rocky Mountain juniper, or Utah juniper, or other species designated by the division on a specific property may be cut and removed.

(4) The tag must be visibly attached to the tree before it is transported from the cutting site.

(5) The fee for a Christmas tree permit is that which is set by the Utah Legislature yearly.

(6) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.

(7) Division lands are closed from December 1 through April 30 or as otherwise specified in the permit.

R657-28-16. Wood Products -- Ornamentals and Posts.

(1) A person may purchase one permit per year to remove ornamentals or cut posts on division lands.

(2) A person may harvest ornamentals up to an aggregate value of $60 per permit.

(3) A person may harvest posts up to an aggregate value of $50 per permit.

(4) The value of ornamentals and posts are those values determined yearly by the Utah Legislature; compensation received by the division may be monetary, in-kind, or both.

R657-28-17. Wood Products -- Contract Agreements.

(1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.

(2) Contracts shall be awarded through the competitive proposal solicitation process described in R657-28-20.

(3) Compensation may be either in-kind, monetary, or both.

R657-28-18. Seed Harvesting.

(1) The division may issue seed harvesting permits that grant a permittee exclusive rights to harvest all seeds for a specified species for a single growing season on the division property specified in the permit.

(2) Seed harvesting permits may be issued under a competitive bid process or on a first-come, first-served basis.

(a) The division may solicit competitive bids for seed harvesting permits for locations the division determines may provide opportunities for seed harvesting if such determination is made at least three weeks in advance of the anticipated onset of harvest.

(i) The division shall notify all parties by mail or electronic mail who have provided contact information and who have previously indicated their desire to be contacted regarding seed harvesting opportunities on division lands.

(ii) The bid award and seed harvesting permit shall be issued at least two weeks in advance of the anticipated onset of harvest.

(b) The division may issue seed harvesting permits on a first-come, first-served basis for locations the division determines may provide opportunities for seed harvesting if such determination is made after three weeks prior to the anticipated onset of harvest.

(i) Negotiated compensation shall reflect a fair market value of the opportunity provided.

(ii) In order to determine a fair market value of the seed harvesting opportunity, the division may rely upon, but not be limited to, one or more of the following:

(A) results of competitive bids for seed harvesting permits on other division properties;

(B) market information obtained from other landowners, including other state agencies;

(C) market information provided by a seed harvester's competitors; or

(D) market information provided by seed wholesalers or retailers; etc.

(3) Compensation received by the division may be either a percentage of the seeds harvested or other in-kind compensation, monetary compensation, or a combination thereof.

(a) All seed delivered to the division as compensation shall meet standards set forth in the Federal Seed Act (Title 7, Ch. 37), the Utah Seed Act (Utah Code Title 4 Chapter 16), and Utah Seed Law (Utah Administrative Rule R68-8), and shall also meet minimum germination and purity standards determined by the division.

(4) Permittees shall compensate the division in whole regardless of whether seeds are harvested, unless harvest was precluded by circumstances beyond the permittee's control.

(5) If the permittee breaches the provisions of the permit, the permit may be terminated and the permittee disqualified from bidding on future seed harvesting permits. The division shall notify the permittee in writing of any breach of the terms of the permit.

(6) Methods of harvest that in the judgment of the division may kill or seriously injure source plants are expressly prohibited.

(7) The permittee may post the specified division property as prohibited against unauthorized seed harvesting provided the posting prohibits harvesting of only those seed species which the permittee is granted exclusive right to harvest. Permittee must remove signs after harvest of seed.

R657-28-19. Agricultural Leases.

(1) The division may lease lands or water rights for purposes of cultivated crop production only when the division determines that such a lease would provide a net benefit for wildlife or would facilitate wildlife management activities that would provide a net benefit for wildlife.

(2) Leases may be issued for a term no greater than one year, with an option to renew in accordance with Subsection (10).

(3) Compensation received by the division for agricultural leases may be either a fixed rate per acre or in-kind or a combination of both as specified by the division, providing that the value received is customary and reasonable.

(4) The lessee is obligated to satisfy its compensation obligations regardless of whether the lessee uses the lease.

(5) The division may require the lessee to acquire crop insurance if the division is to receive a share of the harvested crop.

(6) At the time of initial lease payment, the lessee may be

required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.

(7) Agricultural leases may be issued by the division through a competitive proposal solicitation process set forth in R657-28-20.

(8) Agricultural Leases issued by the division shall include:

(a) The name, and a map, of the subject property to be leased;

(b) A description of the vegetation management goals to be achieved, including type of crop to be grown and a description of crop residue, if any, to be left after harvest to benefit wildlife; or any other vegetation parameter desired for the subject lease property;

(c) A description of the benefit expected for wildlife;

(d) A description of the rights of the lessee and the division;

(e) The type and amount of compensation to be delivered to the division, and the date compensation is due;

(f) A provision for adjusting the base rental fee, if any, over the life of the lease to reflect changes in the market value of the lease;

(g) A statement describing how reporting is to be made of the quantity of crop harvested if a crop share is identified as in-kind compensation;

(h) A statement that the division may unilaterally terminate the lease if lessee breaches the terms of the lease contract;

(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the lessee and the division;

(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land;

(k) A statement assuring non-motorized public access to division property by the lessee;

(l) A statement that the lessee is solely responsible for fence maintenance of the leased property;

(m) A statement that the division is held harmless and indemnified for acts of God or any and all losses due to domestic livestock or public or wildlife use of the subject property during the period of the lease;

(n) A statement indemnifying the state from all actions of the lessee;

(o) Lessee's consent to suit or arbitration arising under terms of the lease or as a result of operations carried on under the lease;

(9) The division shall determine the degree to which a lessee has complied with the provisions of the lease, and shall report to the lessee whether compliance was satisfactory or unsatisfactory.

(10) Lessees who receive a satisfactory review for the previous year may have the option to renew the lease for the coming year provided the division determines the lease continues to provide a net benefit for wildlife or facilitates wildlife management activities that provide a net benefit for wildlife; except the division may at its discretion;

(a) Withdraw the subject property from lease if the division determines the lease has failed to benefit wildlife or facilitate wildlife management goals;

(b) Alter the non-compensatory provisions of the lease if the division determines that such alteration will better achieve its wildlife management goals;

(c) Identify a different in-kind compensation on division property that is reasonably comparable in value to the market-adjusted in-kind compensation of the original lease;

(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the lease to competitive proposal solicitation.

(d) Should the terms of the original lease agreement be changed by the division, the lessee shall have the option to renew the lease.

(i) A lessee may hold a lease on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the lease out to competitive proposal solicitation at the conclusion of the fifth year;

(ii) The lessee having the lease for the preceding ten years on a subject division property is entitled to submit a competitive proposal on the same division property if the lessee has not been disqualified from consideration as a lessee on division lands.

(e) The division reserves the right to issue leases without options to renew, or with options to renew for a shorter aggregate term.

(11) No improvement, including the building of fences, corrals, and water structures used to impound, divert, or convey water claimed solely under a division water right; or management practice, including prescribed burning, seeding, chaining, harrowing, irrigation, etc.; shall be constructed or conducted on division lands without the express written consent of the division.

(12) All improvements, including fences, corrals, water structures, etc., constructed on division property by lessee and which are affixed to the property shall be property of the division.

(a) Lessee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the lessee.

(13) All lessees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-20. Competitive Proposal Solicitation Process.

(1) Grazing permits, leases, or wood harvesting contracts may be issued by the division through a competitive proposal solicitation process to achieve the division's vegetation or wildlife management goals. The division may use the process described herein for the removal of other natural resources from division lands for commercial gain by any party.

(2) Proposals for grazing permits, leases, or wood harvesting contracts will be solicited through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit or lease is offered at least 30 days or more in advance of the deadline for proposal submittals. At least 30 days prior to the deadline for proposal submittals, notification will be sent to landowners adjoining the subject division property, and to livestock operators having federal permits to graze a federal allotment adjacent to division property.

(a) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the subject permit, lease, or wood harvesting contract. The division shall also identify the desired form of compensation, whether monetary, in-kind, or both.

(b) The division shall make available at an applicant's request additional information, including information describing the division's management objectives for the subject property to be achieved through a grazing permit, lease, or wood harvesting contract, that would assist an applicant in making a reasonably informed proposal.

(3) At the conclusion of the advertising process, the division shall review and select the preferred applicant using either of the following processes. The division shall have full

discretion to select which process to use:

(a) The division shall allow all applicants at least 20 days from the date of mailing of notice to submit a sealed proposal. Applicants not submitting a proposal within the prescribed time period shall have their proposals rejected. Competing proposals are evaluated using the following criteria where applicable:

(i) Resources available to applicant that can be used to control livestock movement on the subject division property;

(ii) Applicant's ability to meet lease or prescribed management objectives;

(iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;

(iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;

(v) Applicant's knowledge of principles of range science, range management, or agriculture;

(vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;

(vii) Applicant's right to the use of adjoining or nearby properties with which management of a division property may be coordinated;

(viii) Proximity of applicant's property to division property;

(ix) Functionality of subject division property's perimeter fences in controlling livestock movement on or off the subject property;

(x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's grazing permit, lease, or wood harvesting contract administrative costs;

(xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.

(b) The division may invite each qualified applicant to meet privately with the division and present its proposal for the subject property's grazing permit, lease, or wood harvesting contract. The division may request parties other than those responding to the initial solicitation to meet with the division. The division shall have full authority to:

(i) Offer counter-proposals;

(ii) Negotiate with any or all of the applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;

(iii) Terminate the negotiation process entirely; or

(iv) Require the respondents to proceed through the process described in Subsection (3)(a).

(v) The division may select the preferred applicant based on criteria delineated in Subsection (3)(a)(i) through (xi), or may withdraw the property from consideration for grazing, leasing, or wood harvesting.

(4) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit, special use permit, lease, or wood harvesting contract from the division.

R657-28-21. Applications to Appropriate Water on Division Lands.

No party possessing a right-of-way lease, grazing permit, agricultural lease, non-agricultural lease, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of the State of Utah, Division of Wildlife Resources. All water structures, including impoundment, diversion and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall be the property of the division.

R657-28-22. Extraction of Sand, Gravel, Cinders, and Ornamental Rock on Division Lands.

(1) The division shall not sell, lease, or otherwise permit the excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands by any private or public entity except when the division determines that such sale, lease, excavation or extraction is consistent with the purposes for which the land was acquired and provides a net-benefit to wildlife.

(2) The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.

(3) Following the completion of excavations, the division shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the division, stabilization, closure, or removal of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.

(4) Bonding in an amount equal to two-times the estimated cost of reclamation shall be required by the division prior to authorizing the sale, lease, excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.

(5) Nothing herein shall be construed as superceding the division's legal obligations to obtain approval from the U.S. Fish and Wildlife Service or any other party possessing a legal interest in the property prior to authorizing the extraction or excavation of sand, gravel, cinders, ornamental rock, or other common mineral resource on division property.

R657-28-23. Rights-of-Way Leases, Non-Agricultural Leases of Division Lands, Special Use Permits -- Application Procedures --Required Information -- Conditional Approval.

(1) To apply for a right-of-way lease, special use permit, or non-agricultural lease of division lands, a person shall:

(a) complete and submit an application provided by the division to the regional supervisor in the appropriate division regional office;

(b) pay a nonrefundable application fee;

(c) submit the application and application fee at least 120 days prior to the proposed construction or occupancy date; and

(d) include the following information with the application:

(i) A 7.5-minute topographic map or aerial photo showing the proposed project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

(ii) Evidence of an ownership or leasehold interest in the mineral estate where development of that estate is the purpose for applicant's seeking a right-of-way lease, special use permit, or lease.

(iii) A project plan that includes:

(A) project alternatives, including alternatives which do not affect the division;

(B) a description of the activity to occur, or infrastructure to be constructed, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. The description should be sufficiently detailed as to provide an accurate and complete representation of the proposed action;

(C) identification of adverse impacts to wildlife and

wildlife habitat associated with the proposed use and how they will be avoided, minimized, or mitigated; and

(D) project alternatives that do not affect division land which were considered but rejected, and the specific reasons those alternatives were rejected.

(2) Upon receiving the application, application fee, and the information required in Subsection (1)(d) the division director or the director's designee may either deny the application or grant a conditional approval within 60 days.

(3) If the application is denied, the director shall provide a written notice to the applicant.

(4) Before final approval is granted the division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed right-of-way lease and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the lease that is compatible with, and requires no editing for, accurate downloading into geographic systems information software used by the division.

(c) Evidence that the applicant has given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.

(d) A biological assessment, including an analysis of the potential direct, indirect, and cumulative effects the proposed project may have on wildlife, wildlife habitat, and public recreational use opportunities.

(e) A survey of threatened, endangered and candidate plant and animal species, Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal, and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

R657-28-24. Rights-of-Way Leases, Leases of Division Lands, Special Use Permits -- Final Determination -- Project Review -- Contract Provisions.

(1) Within 60 days of receiving the application fee and information required in Section R657-28-23, or 60 days of granting conditional approval, whichever is greater, the division director or the director's designee shall make a final determination to affirm or modify the conditional approval or deny the application.

(2) The director or the director's designee shall deny an application if:

(a) the application does not include the information requested by the division;

(b) the potential impact to wildlife, wildlife habitat, public recreation, or cultural or historic resources is unacceptable;

(c) the applicant has not, in the opinion of the division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

(d) there are, in the opinion of the division, alternative locations reasonably available on lands not owned by the division for the requested use, including organized events that may harm wildlife or wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails; or

(e) if the applicant's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party.

(f) the applicant is in default on any previous obligation to the division.

(3) If the application is denied, the division shall provide a written notice to the applicant.

(4) A right-of-way lease or other form of lease may include provisions requiring the applicant to:

(a) Restore all structures including fences, roads, and existing facilities, and regrade as nearly as practical to the pre-project grade and contour, and revegetate the impacted area to division specifications;

(b) Adhere to the terms of the applicant's approved project plan prescribed in Subsection R657-28-23(1)(d)(iii); and

(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation, and all other expenses associated with the project.

(5) A special use permit shall include any applicable provision prescribed in Subsection (4).

(6) A right-of-way lease or division land lease may be granted for a maximum of 30 years from the date of signing; however, the division explicitly reserves the right to grant leases for shorter periods.

(7) The termination date for a lease will be determined by the division after assessing the activity applied for and the needs of the lessee.

(8) A special use permit may only be granted for a maximum period of one year from the date of signing.

R657-28-25. Right-of-Way Leases, Division Land Leases, Special Use Permits -- Compensation.

(1) The division shall receive compensation for all right-of-way leases, division land leases, and special use permits consistent with the following requirements:

(a) Compensation may be based on:

(i) the cost incurred to the division in evaluating and preparing the right-of-way lease, division land lease, or special use permit;

(ii) the cost incurred by the division in administering the right-of-way lease, division land lease, or special use permit ;

(iii) the appraised value of the affected property;

(iv) the fair market value of the use;

(v) fee schedule set forth by the Utah Legislature;

(vi) impacts to wildlife and wildlife habitat;

(vii) impacts to public access; and

(viii) impacts to public opportunities to engage in wildlife related activities.

(b) In lieu of monetary compensation, the division may accept in-kind compensation in the form of, but not limited to, land enhancements, habitat maintenance or improvements, land exchange, public access for wildlife related activities, or other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities.

(2) Every right-of-way lease, division land lease, and special use permit shall be documented in writing and contain the following information:

(a) the names of the parties and other persons involved in the transaction;

(b) the signature of the parties and other persons involved in the transaction. The individual signing on behalf of the applicant must provide evidence he/she is authorized to sign on the applicant's behalf;

(c) a detailed description of the compensation, including compensatory mitigation;

(d) a detailed description of the location, terms, and conditions of the right-of-way lease, division land lease, or special use permit;

(e) a statement that the parties and signatories to the transaction enter therein voluntarily and mutually agree to its

terms and conditions;

(f) the commencement and termination date of the right-of-way lease, division land lease, or special use permit.

R657-28-26. Termination of Right-of-Way Leases, Division Land and Water Leases, Grazing Permits, and Special Use Permits.

(1) Unless specified elsewhere in this Rule, the provisions of this section set forth the process for the termination of grazing permits, special use permits, and leases. If provisions of this section are in conflict with provisions in other sections of this Rule, those other sections shall govern.

(2) A person may request termination of their grazing permit or lease by submitting a written request to the division at least 60 days prior to the requested date of termination.

(3) A person may request termination of their special use permit by submitting a written request to the division at least 10 days prior to the beginning date of the special use permit.

(4) The division is under no obligation to grant a requested termination of a grazing permit, special use permit, or lease, and retains the right to pursue specific performance of any contract into which it has entered.

(5) The division may not grant a grazing permit, special use permit, or lease termination request until the required reclamation and any compensatory mitigation for impacts incurred by the project are completed.

(6) The division may unilaterally terminate any grazing permit, special use permit, or lease and require full reclamation of disturbed areas where the holder violates any of the conditions of the grazing permit, special use permit, or lease.

(7) Before terminating a grazing permit, special use permit, or lease the division shall:

(a) Give written notice of the intended division action to the holder of the permit or lease by certified mail;

(b) Document noncompliance; and

(c) Allow the holder of the lease or permit 30 days to remedy the violation and comply with the terms set therein.

(8) Any party breaching an agreement or contract with the division, or being in default on an obligation to the division, may be disqualified from securing a grazing permit, special use permit, or lease from the division or otherwise applying for the ability to remove any natural resource from division lands in the future. The division shall notify the party in writing of the party's disqualification.

R657-28-27. Renewal of Right-of-Way Leases and Non-Agricultural Division Land Leases.

(1) A person may apply to renew a right-of-way lease or division land lease by:

(a) submitting a written request to the division;

(b) updating the original application; and

(c) paying a renewal fee.

(2) A renewal may be requested no earlier than 120 days and no later than 60 days prior to the expiration date of the right-of-way lease or division land lease.

(3) A renewal shall be granted under the division's laws, rules, and policies in effect at the time of renewal.

(4) A request for a change in the size or use of an area or for an additional area or use shall be applied for as a new right-of-way lease or division land lease.

(5) The division may deny renewal of a right-of-way lease or division land lease for any of the following reasons:

(a) Unacceptable impacts to wildlife, wildlife habitat, public recreation, or cultural or historic resources;

(b) Continuation of the right-of-way lease or division land lease is, in the opinion of the division, incompatible with the intended uses of the land;

(c) The person has not complied with terms and conditions of the lease contract; or

(d) The management goals for the area have changed to the extent that the right-of-way lease or division land lease is no longer compatible.

(6) The division shall provide a written notice to the applicant stating the reason for denial.

(7) Nothing herein shall be construed as limiting the division in seeking agreement from the U.S. Fish and Wildlife Service, or any other party with a contractual or property interest in the division's property.

R657-28-28. Sublease, Conveyance, or Assignment of Grazing Permits; Special Use Permits; Seed Harvesting Permits; Wood Products Harvesting Permits; Right-of-Way, Agricultural, and Division Land Leases; and Contracts for the Removal of Natural Resource.

(1) Leases, grazing permits, special use permits, seed harvesting permits, any form of wood products harvesting permit, or contracted rights to remove natural resources of any kind may not be assigned, partially assigned, subpermitted, leased, subleased, mortgaged, pledged or otherwise transferred, disposed, or encumbered in any fashion without the prior written consent of the division.

(2) A sublease, conveyance, or assignment may be made only to a person, firm, association, or corporation qualified to do business in the state of Utah, and which is not in default under the laws of the state of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the division.

(3) A sublease, conveyance, or assignment may not be approved without reimbursement for the division's administrative costs associated with said sublease, conveyance, or assignment; and payment of:

(a) the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted; or

(b) an alternate fee established by, and at the discretion of, the division.

(4) A sublease, conveyance, or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

(5) A sublease, conveyance, or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the permit or lease contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing, conveying, or assigning the interest shall be given to the division.

(6) A sublease, conveyance, or assignment shall be executed according to division procedures.

(7) A sublease, conveyance, or assignment is not effective until approval is given by the division. Any sublease, conveyance, or assignment made without such approval is void.

R657-28-29. Abandonment of Right-of-Way Leases.

(1) If within 365 days of the date of execution of right-of-way lease a lessee fails to construct and install the infrastructure which necessitated lessee's acquisition of a right-of-way lease, or the lessee otherwise fails to use all or any portion of a right-of-way, that portion of the right-of-way so unused shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division. (2) If proof of lessee's use of all or a portion of a right-of-way lease cannot be provided for any contiguous three-year period, that portion of the right-of-

way for which proof of use cannot be provided shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division.

(2) In order to facilitate the determination of an abandonment of right-of-way leases, the lessee shall pay an administrative charge every three years during the term of the lease unless otherwise stated in the lease contract.

R657-28-30. Bonding.

(1) Prior to approval and issuance of a right-of-way lease, division land lease, or special use permit, the division may require the applicant to post a surety bond in an amount determined by the division.

(2) Only bonds issued by insurers listed in U.S. Treasury Department Circular 570, or with a financial rating assigned by the A.M. Best Company Insurance Guide of A or higher with respect to property and casualty sureties, shall be accepted by the division.

(3) The division may use the surety bond to pay for reclamation, compensatory mitigation, payment of any money owed the division, or any other unpaid obligation of right-of-way lessee, division land lessee, or special use permit holder according to the terms and conditions set therein. Should the amount of bond fail to cover the cost of reclamation, mitigation, or other contractual obligations, the party shall remain liable for any additional costs over and above the bonded amount.

(4) The division may require a reasonable increase from time-to-time in the amount of the bond after providing right-of-way lessee, division land lessee, or special use permit holder 30 days written notice.

(5) The bond shall be in effect even if the lessee or permittee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(6) Following termination of a right-of-way lease, division land lease or special use permit; and satisfaction of the contractual obligations of the holder; the division shall release any unused bonds back to the lessee or permit holder within six months.

KEY: wildlife, right-of-way, leases, land use, wood
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R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal, mineral or plant materials.

(b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(c) "Bear" means Ursus americanus, commonly known as black bear.

(d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(e) "Cub" means a bear less than one year of age.

(f) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(g) "Green pelt" means the untanned hide or skin of a bear.

(h) "Limited entry hunt" means any hunt listed in the hunt table, published in the proclamation of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include pursuit only.

(i) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(j) "Pursue" means to chase, tree, corner or hold a bear at bay.

(k)(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is timely corrected through the application correction process.

(l) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

R657-33-3. Permits for Taking Bear.

(1)(a) To take a bear, a person must first obtain a valid limited entry bear permit for a specified hunt unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain a valid bear pursuit permit.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

(4) To obtain a limited entry bear permit, a person must possess a Utah hunting or combination license.

R657-33-4. Permits for Pursuing Bear.

(1) To pursue bear, a person must obtain a bear pursuit permit as provided in the proclamation of the Wildlife Board for taking bear.

(2) Residents and nonresidents may purchase bear pursuit permits.

(3) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

R657-33-5. Hunting Hours.

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-33-6. Firearms and Archery Equipment.

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) a bow and arrows.

(2) A person may not use a crossbow to take bear, except as provided in Rule R657-12.

R657-33-7. Traps and Trapping Devices.

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-33-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-33-11. Party Hunting.

A person may not take a bear for another person.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.

(3) When dogs are used in the pursuit of a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a valid limited entry bear permit for the limited entry unit being hunted.

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) The following information must be provided to obtain a Certificate of Registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(5)(a) Any person interested in baiting on lands administered by the U.S. Forest Service or Bureau of Land Management must verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a Certificate of Registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.

(6) A $5 handling fee must accompany the application.

(7) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(8) Any person tending a bait station must be listed on the certificate of registration.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use no more than two bait stations. The bait station(s) may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the proclamation of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

(6) Violations of this rule and the proclamation of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

R657-33-15. Tagging Requirements.

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-33-16. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its

skull.

R657-33-17. Permanent Tag.

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-33-18. Transporting Bear.

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid license and permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-33-20. Donating.

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-33-21. Purchasing or Selling.

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a green pelt, gall bladder, tooth, claw, paw or skull of any bear.

R657-33-22. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

R657-33-23. Livestock Depredation.

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation who may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; or

(b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating bear and must be verified by Wildlife Services or division personnel.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

R657-33-25. Taking Bear.

(1)(a) A person who has obtained a limited entry bear permit may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.

(b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.

(2)(a) A person may not take or pursue a female bear with cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.

(b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.

(5) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-26. Bear Pursuit.

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(a) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(3) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or

(c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (c) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(4) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(5) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12.

(6) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-27. General Application Information.

(1) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a bear hunting permit.

(2) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

(3) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.

R657-33-28. Waiting Period.

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

R657-33-29. Application Procedure.

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.

(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(3)(a) Applications must be submitted by the means and date provided in the proclamation of the Wildlife Board for taking bear. Applications filled out incorrectly may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(c) The opportunity to correct an error is not guaranteed.

(4) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(5) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).

(6) To apply for a resident permit, a person must establish residency at the time of purchase.

(7) The posting date of the drawing shall be considered the purchase date of a permit.

R657-33-30. Fees.

(1) Each application must include:

(a) the permit fee; and

(b) the nonrefundable handling fee.

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(2) Fees must be paid in accordance with Rule R657-42-8.

R657-33-31. Drawings and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of draw results by the date published in the proclamation of the Wildlife Board for taking and pursuing bear. The drawing results will be posted on the division's Web site.

(3) Permits remaining after the drawing will be sold on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.

(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(5)(a) A person may withdraw their application for the bear drawing provided a written request for such is received by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking bear.

(6)(a) An applicant may amend their application for the limited entry bear permit drawing provided a written request for such is received by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking bear.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended, and that amendment results in an error, the division reserves the right to reject the entire application.

(8) Handling fees and hunting or combination license fees will not be refunded.

R657-33-32. Bonus Points.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application in the drawing; or

(b) a valid application when applying for a bonus point in the bear drawing.

(2)(a) A person may apply for one bear bonus point each year, except a person may not apply in the drawing for both a limited entry bear permit and a bear bonus point in the same year.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

(3)(a) Each applicant receives a random drawing number for:

(i) the current valid limited entry bear application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(5) Bonus points are forfeited if a person obtains a limited entry bear permit except as provided in Subsection (6).

(6) Bonus points are not forfeited if a person is successful in obtaining a Conservation Permit.

(7) Bonus points are not transferable.

(8)(a) Bonus points are tracked using Social Security numbers or division-issued hunter identification numbers.

(b) The division shall retain paper copies of applications for three years prior to the current bear drawing for the purpose of researching bonus point records.

(c) The division shall retain electronic copies of applications from 1996 to the current bear drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

R657-33-33. Refunds.

(1) Unsuccessful applicants who applied with a credit or debit card will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

R657-33-34. Duplicate License and Permit.

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

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August 7, 2007 23-14-18
Notice of Continuation December 31, 2002 23-14-19
23-13-2

R657. Natural Resources, Wildlife Resources.
R657-38. Dedicated Hunter Program.
R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program provides the opportunity for participants to:

(a) increase the opportunity for recreational general deer hunting, while the division regulates harvest;

(b) increase participation in wildlife management decisions;

(c) increase participation in wildlife conservation projects that are beneficial to wildlife conservation and the division; and

(d) attend wildlife conservation courses about hunter ethics and the division's wildlife conservation philosophies and strategies.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Dedicated Hunter Permit" means a general buck deer permit issued to a dedicated hunter participant in the Dedicated Hunter Program, which authorizes the participant to hunt general archery, general any weapon and general muzzleloader in the region specified on the permit.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general any weapon or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Limited Entry Dedicated Hunter Permit" means a limited entry deer permit or limited entry elk permit, for use in an area selected by the Division, which shall be offered through the Dedicated Hunter Program Drawing.

(d) "Participant" means a person who has remitted the appropriate fee and has been issued a certificate of registration for the Dedicated Hunter Program.

(e) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(f) "Program harvest" means tagging a deer with a Dedicated Hunter Permit or Limited Entry Dedicated Hunter Deer Permit, or failing to return the Dedicated Hunter Permit or Limited Entry Dedicated Hunter Deer Permit with an attached, unused tag, while enrolled in the program.

(g) "Program requirements" mean the Wildlife Conservation Course as provided in Section R657-38-7, the Wildlife Conservation Project as provided in Section R657-38-8, the Regional Advisory Council meeting as provided in Section R657-38-9, and returning an unused Dedicated Hunter Permit and attached tag as provided in Subsection R657-38-11(1).

(h) "Wildlife conservation course" means a course of instruction provided by the division on hunter ethics and wildlife conservation philosophies and strategies.

(i) "Wildlife conservation project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other conservation projects or activities that benefit wildlife or directly benefits the division.

(j) "Wildlife conservation project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife conservation project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1)(a) To participate in the program a person must apply for, obtain and sign a certificate of registration issued by the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Certificates of registration are issued on a first-come, first-served basis at division offices.

(d) Each prospective participant must submit an application provided by the division and provide evidence of having completed a wildlife conservation course before the division may issue the certificate of registration for the program.

(e) A certificate of registration to participate in the program shall only be issued during the bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife board for taking big game.

(2) The division may deny issuing a dedicated hunter certificate of registration to a person for any of the following reasons:

(a) The application is incomplete or contains false information;

(b) The person, at the time of application, is under a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere;

(c) The person, in the previous five years prior to applying for the program, has been convicted of, entered a plea in abeyance to, or entered into a diversion agreement for violating any provision of:

(i) 23-20-3 Unlawful Possession or Taking Involving Big Game;

(ii) 23-20-3.5 Unlawful Taking While Trespassing;

(iii) 23-20-4 Wanton Destruction;

(iv) 23-20-8 Wasting;

(v) 23-20-14 Trespass;

(vi) 23-20-30 Failure to Tag Violations;

(vii) 23-19-1 or 23-23-10 License Violations involving Big Game;

(viii) 23-19-5 Counterfeiting Licenses;

(ix) 23-20-23 Aiding and Assisting in any of the above violations;

(x) 76-10-505 or 76-10-508 Firearms Safety Violations;

(xi) 77-7-22 Failure to Comply With a Wildlife Citation;

(xii) R657-5-11 or R657-5-12 Unlawful Possession of a Firearm by an Archer or Muzzleloader;

(xiii) R657-5-14 Spotlighting With a Weapon;

(xiv) R657-5-15 Use of Aircraft to Locate Big Game;

(xv) R657-5-18 Hunting on a Detached Tag; or

(xvi) R657-5-30 through R657-5-36 Waiting Period Violations involving Big Game;

(d) The person has violated the terms of any certificate of registration issued by the division or an associated agreement.

(e) The person has ever had a dedicated hunter certificate of registration suspended by the division.

(3) Prospective participants who have been under any wildlife suspension may not apply for the program until:

(a) their suspension period has ended; and

(b) an additional length of time equivalent to the original suspension has passed.

(4) Each certificate of registration is valid for three consecutive general deer hunting seasons.

(5)(a) Any person who is 12 years of age or older may obtain a certificate of registration. A person 11 years of age may obtain a certificate of registration if the date of that person's 12th birthday is before the end of the any weapon general buck deer hunt in the year the certificate of registration is issued. A person may not use a permit to hunt big game before their 12th birthday.

(b) Any person who is 17 years of age or younger before the beginning date of the annual general archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or

before the beginning date of the annual general archery deer hunt shall pay the adult participant fees.

(6) A certificate of registration authorizes the participant an opportunity to receive annually a Dedicated Hunter Permit to hunt during the general archery, general any weapon and general muzzleloader deer hunts. The Dedicated Hunter Permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(7)(a) Except as provided in Subsections (b), R657-38-10(3)(a), and R657-38-10(6), a participant using a Dedicated Hunter Permit may take two deer within three years of enrollment, and only one deer in any one year as provided in Rule R657-5.

(b) Participants entering or re-entering the Dedicated Hunter Program shall be subject to any changes subsequently made in this rule during the three-year term of enrollment.

(c) The harvest of an antlerless deer using a Dedicated Hunter Permit, as authorized under specific hunt choice areas during the general archery deer hunt, shall be considered a program harvest.

(8) The certificate of registration must be signed by the participant. The certificate of registration is not valid without the required signature.

(9) The participant and holder of the certificate of registration must have a valid Dedicated Hunter Permit in possession while hunting. A participant is not required to have the Dedicated Hunter Certificate of Registration in possession while hunting.

(10) The division may issue a duplicate Dedicated Hunter Certificate of Registration pursuant to Section 23-19-10.

(11) Certificates of registration are not transferable and shall expire at the end of a participant's third general deer hunting season.

(12)(a) The program requirements set forth in Sections R657-38-7, R657-38-8, and R657-38-9 may be waived annually if the participant provides evidence of leaving the state for a minimum period of one year during the enrollment period for the Dedicated Hunter Certificate of Registration for religious or educational purposes.

(b) If the participant requests that the program requirements be waived in accordance with Subsection (a), and the request is granted, the participant shall not receive a Dedicated Hunter Permit for the year in which the program requirements were waived.

(13)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that their enrollment in the program be suspended for the period of their mobilization or deployment.

(14)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that the requirements set forth in Sections R657-38-7, R657-38-8, R657-38-9, and R657-38-11 be extended or satisfied as provided in Subsections (b) through (e).

(b) The program requirement set forth in Section R657-38-7 may be extended to the second or third year of their program enrollment.

(c) The program requirement set forth in Section R657-38-8 may be considered satisfied by a participant that is prevented from completing the requirement due to the mobilization or deployment.

(d) The program requirement set forth in Section R657-38-9 may be:

(i) extended to the third year in the program if the participant is currently in the second year of the program; and

(ii) waived in the third year of the program if the participant remains mobilized or deployed and is unable to reasonably meet the requirement.

(e) A participant must provide evidence of the mobilization or deployment.

(15) A refund for the Dedicated Hunter Certificate of Registration may not be issued, except as provided in Section 23-19-38.2. Any refund will be issued pro rata based on the number of hunting seasons actually participated in during the three-year enrollment period.

R657-38-4. Certificate of Registration Surrender.

(1)(a) A participant who has obtained a Dedicated Hunter Certificate of Registration may surrender the certificate of registration to a division office provided the participant does not have two program harvests.

(b) A participant who surrenders the Dedicated Hunter Certificate of Registration may not re-enter the program until the participant's initial certificate of registration has expired.

(2) The division may not issue a refund, except as provided in Section 23-19-38 and Section R657-38-3(15).

R657-38-5. Certificate of Registration Suspension.

(1) The division may suspend a Dedicated Hunter Certificate of Registration pursuant to Section 23-19-9 and R657-26.

(2) A certificate of registration may be suspended if the participant fraudulently:

(a) submits a time sheet for service hours; or

(b) signs the roll at the regional advisory council meetings.

(3) A certificate of registration may be suspended if the participant is convicted of, enters a plea in abeyance to, or enters into a diversion agreement for committing any offense listed in Section R657-38-3(2)(c).

(4) A certificate of registration is invalid if the participant's big game hunting privileges are suspended in any jurisdiction during the participant's enrollment in the program.

(5) A Dedicated Hunter Permit is invalid if a participant's certificate of registration is suspended.

R657-38-6. Dedicated Hunter Permits.

(1)(a) Participants may hunt during the general archery, general any weapon and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(2)(a) Participants must designate a regional hunt choice upon joining the program.

(b) The regional hunt choice shall remain in effect unless otherwise changed in writing by the participant by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game.

(3)(a) Participants must notify the division of any change of mailing address in order to receive a Dedicated Hunter Permit by mail.

(b) A participant who enters the program as a resident and becomes a nonresident, or claims residency outside of Utah shall be issued a nonresident at no additional charge for the remainder of the three-year enrollment period.

(c) A participant who enters the program as a nonresident and becomes a resident, or claims residency in Utah, shall be issued a resident with no reimbursement of the higher nonresident fee for the remainder of the three-year enrollment period.

(4)(a) Dedicated Hunter permits may be issued through the mail by June 1 of each year and again three weeks prior to the beginning of the general archery deer hunt, and only upon

evidence that the participant has completed all program requirements and possesses a Utah hunting or combination license.

(b) Participants completing program requirements after June 1 may obtain their Dedicated Hunter Permit over-the-counter from any division office.

(5) A Dedicated Hunter Permit may not be issued to any participant who:

(a) does not perform the program requirements;

(b) violates the terms of this rule or the Dedicated Hunter Certificate of Registration;

(c) does not possess a current Utah hunting or combination license.

(6)(a) The division may issue a duplicate Dedicated Hunter Permit pursuant to Section 23-19-10.

(b) If a participant's unused Dedicated Hunter Permit and tag is destroyed, lost, or stolen a participant may complete an affidavit verifying the permit was destroyed, lost, or stolen in order to obtain a duplicate.

(c) A duplicate Dedicated Hunter Permit shall not be issued after the closing date of the general any weapon buck deer hunt, however, a participant may complete an affidavit and submit a copy of the affidavit for program reporting purposes as required in Section R657-38-9(1).

(7)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42 provided annual program requirements are completed.

(b) A participant may not exchange a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may exchange a Dedicated Hunter Permit for a Dedicated Hunter Permit in any other available area prior to the opening of the general muzzleloader buck deer hunt.

(c) A participant may not surrender a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may surrender a Dedicated Hunter Permit after the opening of the buck deer archery hunt, provided the Division can verify that the permit was never in the participant's possession.

(9)(a) Lifetime license holders may participate in the program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader permit.

R657-38-7. Wildlife Conservation Course.

(1)(a) The division shall provide an annual wildlife conservation course.

(b) Prior to entering or re-entering the program, and obtaining a certificate of registration, a prospective participant must complete the wildlife conservation course within the current year in which the prospective participant is entering or re-entering the program.

(2) The wildlife conservation course shall explain the program to give a prospective participant a reasonable understanding of the program as well as hunter ethics, the division's Regional Advisory Council and Wildlife Board processes, and wildlife conservation philosophies and strategies.

(3) The wildlife conservation course is available through the division's Internet site, and a limited number of classroom courses may be available, as scheduled by division offices.

(4)(a) Evidence of completion of the wildlife conservation course shall be provided to the prospective participant upon completion of the wildlife conservation course.

(b) Certificates of registration shall not be issued without verification of the prospective participant having completed the wildlife conservation course.

(c) The division shall keep a record of all participants who complete the wildlife conservation course.

R657-38-8. Wildlife Conservation Projects.

(1) Each participant in the program shall provide a total of 24 hours of service as a volunteer on a wildlife conservation project as provided in Subsections (a) and (b), or pay the approved fee for each hour not completed as provided in Subsection (c).

(a) A participant must provide no fewer than eight hours of service before obtaining the first Dedicated Hunter Permit.

(b) A participant must provide the remaining balance of service hours prior to receiving the second Dedicated Hunter Permit.

(c) Residents may not purchase more than 16 of the 24 total required service hours. Nonresidents may purchase all of the 24 total required service hours.

(d) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife conservation project to provide other forms of service.

(e) Goods or services provided to the division for wildlife conservation projects by a participant may be, at the discretion of the wildlife conservation project manager, substituted for service hours based upon current market values for the goods or services, and using the approved hourly service buyout rate when applying the credit.

(2) Wildlife conservation projects shall be designed by the division, or any other individual or entity and shall be pre-approved by the division.

(3)(a) Wildlife conservation projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities at division offices.

(4)(a) Service hours completed in any given year may be carried over to the following years, however excess service hours shall not be carried over to any year outside of the three-year enrollment period.

(b) Dedicated Hunter permits issued to participants who fail to make the deadline, two weeks prior to the opening date of the general archery deer hunt annually, shall be issued only as an over-the-counter transaction at division offices.

(5) A participant must request a receipt from the wildlife conservation project manager for service hours worked at the completion of the project, or upon showing evidence that the service hours worked are completed.

(6)(a) If a participant fails to fulfill the wildlife conservation project service requirement in any year of participation, as required under Subsection (4), the participant shall not be issued a Dedicated Hunter Permit for that year.

(b) The participant may obtain a Dedicated Hunter Permit for subsequent years upon completion of the wildlife conservation project program requirements due or payment of the fee in lieu thereof.

(7) The wildlife conservation project manager shall keep a record of all participants who attend the wildlife conservation project and the number of hours worked.

R657-38-9. Regional Advisory Council.

(1) Prior to obtaining a second Dedicated Hunter Permit while in the program, a participant must attend one regional advisory council meeting.

(2) A participant may request a receipt from the division for attending the regional advisory council meeting.

(3) The division shall keep a record of all participants who attend and sign the roll at the regional advisory council meetings.

R657-38-10. Obtaining Other Permits.

(1)(a) Participants may not apply for or obtain general buck deer permits issued by the division through the big game drawing, license agents, over-the-counter sales, or the Internet during the three-year period of enrollment in the program.

(b) In the initial sign-up year for the program, if the participant previously applied for a general buck deer permit through the big game drawing, a participant must withdraw that permit application prior to the application withdrawal date as published in the proclamation of the Wildlife Board for taking big game.

(i) Upon withdrawal, the general buck deer permit fee may be refunded by the division in May, but the handling fee shall not be refunded.

(ii) If the participant fails to withdraw the general buck deer application and the permit is drawn, the general deer permit obtained through the drawing becomes invalid and must be surrendered prior to the beginning date of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(2) Participants may not apply for or obtain general landowner buck deer permits as provided under Rule R657-43.

(3)(a) Participants may apply for or obtain any other non general season buck deer permit as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(i) harvest of a deer with a permit obtained pursuant to Subsection (a) shall not be considered a program harvest.

(ii) participants are not required to complete program requirements prior to obtaining a permit pursuant to Subsection (a).

(b) Participants may apply for or obtain a Dedicated Hunter Limited Entry Permit as provided under Section R657-38-12.

(c) If the participant obtains any other buck deer permit, or Dedicated Hunter Limited Entry buck deer permit, the Dedicated Hunter Permit becomes invalid and the participant must surrender the Dedicated Hunter Permit prior to the opening day of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(d) If the participant obtains any other buck deer permit, or a Dedicated Hunter Limited Entry Permit, the participant may use the permit only in the prescribed area during the season dates listed on the permit.

(e) Participants who obtain a cooperative wildlife management unit permit may hunt only within those areas identified on the permit and only during the dates determined by the cooperative wildlife management unit landowner or operator.

(4) The permit must be on the person while hunting.

(5) Obtaining any other buck deer permit does not authorize a participant to take an additional deer.

(6)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of permits issued pursuant to this program.

(c) Antlerless harvest of a deer as provided in the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game shall not be considered a program harvest.

R657-38-11. Reporting Requirements.

(1)(a) A participant must return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-6(6)(c), to a division office annually by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game.

(b) The division shall credit a program harvest to any participant who fails to return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-6(6)(c), by the application deadline for the big game drawing.

(i) An unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Subsection R657-38-6(6)(c), returned after the application deadline for the big game drawing, will be accepted and the credited program harvest removed.

(ii) A participant who returns an unused Dedicated Hunter Permit after the application deadline for the big game drawing, and who is credited with a second program harvest, is only eligible to obtain a Dedicated Hunter Permit for an available region if permits remain after the big game drawing and must obtain the Dedicated Hunter Permit over-the-counter at a division office.

(iii) If there are no permits remaining after the big game drawing, additional Dedicated Hunter permits shall not be issued.

(2)(a) The division may contact participants to gather annual harvest information and hunting activity information.

(b) Participants are expected to provide harvest information and hunting activity information if contacted by the division.

(3)(a) A participant may specify a change to their regional hunt choice for a Dedicated Hunter Permit by submitting a request in writing to the division by the application deadline for the big game drawing.

(b) If a change is not specified pursuant to Subsection (a), the regional hunt choice selected initially or in the prior year shall be assigned.

R657-38-12. Limited Entry Dedicated Hunter Program Drawing.

(1) Any unfilled Dedicated Hunter Permit with an unused attached tag, returned to the Division by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game, may qualify the participant to be entered into the Dedicated Hunter Program Drawing provided:

(a) the participant is currently enrolled in the program;

(b) the participant has returned the Dedicated Hunter Permit and unused, attached tag, or an affidavit as provided in Section R657-38-6(6)(c): and

(c) the participant is 14 years of age or older, or if the participant is 13 years of age and will have their 14th birthday in the calendar year for which the permit is issued.

(2)(a) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits received by the Division in accordance with Subsection (1).

(b) The eligible participants and limited entry permits shall be randomly drawn.

(c) The successful participant must meet all program requirements by June 1 for the current year in which the permit is valid before the issuance of the permit.

(d) If the successful participant fails to fulfill program requirements by June 1, the permit may be issued to the next participant on the alternate drawing list as provided in Rule R657-42.

(3) The drawing results may be posted at division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(4)(a) The successful participant shall be notified by mail.

(b) The successful participant must submit the appropriate limited entry fee within ten business days of the date on the notification letter.

(c) If the successful participant fails to submit the required limited entry permit fee, the permit may be issued to the next

participant, who would have drawn the permit, in accordance with Rule R657-42.

(5)(a) The Limited Entry Dedicated Hunter Permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(e) The recipient of a limited entry deer or elk permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(f) Bonus points shall not be awarded or utilized when applying for or obtaining Limited Entry Dedicated Hunter permits.

(g) Any participant who obtains a Limited Entry Dedicated Hunter Permit is not subject to the waiting periods set forth in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

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R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except turkey permits are valid during any season option.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection (g), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(h) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(i) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) one Merriam and one Rio Grand turkey on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective; and

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit.

R657-41-3. Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) a maximum of 10% of the total permits, assigned to a hunt area or combination of hunt areas, for Rocky Mountain bighorn sheep and desert bighorn sheep;

(b) a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area for the remaining conservation permit species.

(4) The number of conservation and sportsman permits available for use will be determined by the Wildlife Board.

(5) Area conservation permits shall be deducted from the number of public drawing permits.

(6) One sportsman permit shall be authorized for each statewide conservation permit authorized.

(7) All area conservation permits are eligible as multi-year permits except that the division may designate some area conservation permits as single year permits based on the applications received for single year permits.

(8) All statewide permits will be multi-year permits except for a second statewide permit issued for a special event.

R657-41-4. Eligibility for Conservation Permits.

(1) Statewide and area conservation permits may be awarded to eligible conservation organizations to market and sell, or to use as an aid in wildlife related fund raising activities.

(2) To be eligible for multi-year conservation permits, a conservation organization must have generated in conservation permit sales during the previous three year period at least one percent of the total revenue generated by all conservation organizations in conservation permit sales during the same period. Conservation organizations eligible for multi-year permits may not apply for single year permits, and conservation organizations ineligible for multi-year permits may only apply for single year permits.

(3) Conservation organizations applying for single year permits may not:

(a) bid for or obtain conservation permits if any employee, officer, or board of director member of the conservation organization is an employee, officer, or board of director member of any other conservation organization that is submitting a bid for single year conservation permits; or

(b) enter into any pre-bidding discussions, understandings or agreements with any other conservation organization submitting a bid for conservation permits regarding:

(i) which permits will be sought by a bidder;

(ii) what amounts will be bid for any permits; or

(iii) trading, exchanging, or transferring any permits after permits are awarded.

R657-41-5. Applying for Conservation Permits.

(1)(a) Conservation organizations may apply for conservation permits by sending an application to the division.

(b) Only one application per conservation organization may be submitted. Multiple chapters of the same conservation organization may not apply individually.

(c) Conservation organizations may apply for single year conservation permits or multi-year conservation permits. They may not apply for both types of conservation permits.

(2) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended; and

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(3) If applying for single year conservation permits, a conservation organization must also include in its application:

(a) the proposed bid amount for each permit requested. The proposed bid amount is the revenue the organization anticipates to be raised from a permit through auction or other lawful fund raising activity.

(b) certification that there are no conflicts of interest or collusion in submitting bids as prohibited in R657-41-4(3);

(c) acknowledgement that the conservation organization recognizes that falsely certifying the absence of collusion may result in cancellation of permits, disqualification from bidding for five years or more, and the filing of criminal charges;

(d) evidence that the application and bid has been reviewed and approved by the board of directors of the bidding conservation.

(e) the type of permit, and the species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4) An application that is incomplete or completed incorrectly may be rejected.

(5) The application of a conservation organization for conservation permits may be denied for:

(a) failing to fully report on the preceding year's conservation permits;

(b) violating any provision of this rule, Title 23 of the Utah Code, Title R657 of the Utah Administrative Code, a division proclamation, or an order of the Wildlife Board; or

(c) violating any other law that bears a reasonable relationship to the applicant's ability to responsibly and lawfully handle conservation permits pursuant to this rule.

R657-41-6. Awarding Single Year Conservation Permits.

(1) The division shall recommend the conservation organization to receive each single year conservation permit based on:

(a) the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) 90% of the bid amount;

(iii) the organizations maintaining a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the total revenue generated from permit sales, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(2)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw its application for any given permit or exchange its application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws it's bid and the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(3) The Wildlife Board shall make the final assignment of conservation permits at a meeting prior to December 1 annually.

(4) The Wildlife Board may authorize a conservation permit to a conservation organization, other than the conservation organization recommended by the division, after considering the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife in Utah;

(d) previous performance of the conservation organization; and

(e) overall viability and integrity of the conservation permit program.

(5) The total of all bids for permits awarded to any one organization shall not exceed $20,000 the first year an organization receives permits.

(6) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.

(7) If the Wildlife Board authorizes a second statewide conservation permit for a species, the conservation organization receiving the permit must meet the division designated bid for that permit.

R657-41-7. Awarding Multi-Year Conservation Permits.

(1) Distribution of multi-year conservation permits will be based on a sequential selection process where each eligible conservation organization is assigned a position or positions in the selection order among the other participating organizations and awarded credits with which to purchase multi-year permits at an assigned value. The selection process and other associated details are as follows.

(2) Multi-year permits will be awarded to eligible conservation organizations for no more than three years.

(3) The division will determine the number of permits available as multi-year permits after subtracting the proposed number of single year permits.

(a) Season types for multi-year area conservation permits for elk on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- premium;

(ii) second permit -- any-weapon;

(iii) third permit -- any-weapon;

(iv) fourth permit -- archery;

(v) fifth permit -- muzzleloader;

(vi) sixth permit -- premium;

(vii) seventh permit -- any-weapon; and
(viii) eighth permit -- any-weapon.
(b) Season types for multi-year area conservation permits for deer on any given hunt unit will be designated and assigned in the following order:
(i) first permit -- hunter choice of season;
(ii) second permit -- hunter choice of season;
(iii) third permit -- muzzleloader;
(iv) fourth permit -- archery;
(v) fifth permit -- any-weapon;
(vi) sixth permit -- any-weapon;
(vii) seventh permit -- muzzleloader; and
(viii) eighth permit -- archery.
(4) The division will assign a monetary value to each multi-year permit based on the average return for the permit during the previous three year period. If a history is not available, the value will be estimated.
(5) The division will determine the total annual value of all multi-year permits.
(6)(a) The division will calculate a market share for each eligible conservation organization applying for multi-year permits.
(b) Market share will be calculated and determined based on:
(i) the conservation organization's previous three years performance;
(ii) all conservation permits (single and multi-year) issued to a conservation organization except for special permits allocated by the Wildlife Board outside the normal allocation process.
(iii) the percent of conservation permit revenue raised by a conservation organization during the three year period relative to all conservation permit revenue raised during the same period by all conservation organizations applying for multi-year permits.
(7) The division will determine the credits available to spend by each group in the selection process based on their market share multiplied by the total annual value of all multi-year permits.
(8) The division will establish a selection order for the participating conservation organizations based on the relative value of each groups market share as follows:
(a) groups will be ordered based on their percent of market share;
(b) each selection position will cost a group 10% of the total market share except the last selection by a group will cost whatever percent a group has remaining;
(c) no group can have more than three positions in the selection order; and
(d) the selection order will be established as follows:
(i) the group with the highest market share will be assigned the first position and ten percent will be subtracted from their total market share;
(ii) the group with the highest remaining market share will be assigned the second position and ten percent will be subtracted from their market share; and
(iii) this procedure will continue until all groups have three positions or their market share is exhausted.
(9) At least two weeks prior to the multi-year permit selection meeting, the division will provide each conservation organization applying for multi-year permits the following items:
(a) a list of multi-year permits available with assigned value;
(b) documentation of the calculation of market share;
(c) credits available to each conservation group to use in the selection process;
(d) the selection order; and
(e) date, time and location of the selection meeting.
(10) Between the establishing of the selection order and the selection meeting, groups may trade or assign draw positions, but once the selection meeting begins draw order cannot be changed.
(11) At the selection meeting, conservation organizations will select permits from the available pool according to their respective positions in the selection order. For each permit selected, the value of that permit will be deducted from the conservation organization's available credits. The selection order will repeat itself until all available credits are used or all available permits are selected.
(12) Conservation organizations may continue to select a single permit each time their turn comes up in the selection order until all available credits are used or all available permits are selected.
(13) A conservation organization may not exceed its available credits except a group may select their last permit for up to 10% of the permit value above their remaining credits.
(14) Upon completion of the selection process, but prior to the Wildlife Board meeting where final assignment of permits are made, conservation organizations may trade or assign permits to other conservation organizations eligible to receive multi-year permits. The group receiving a permit retains the permit for the purposes of marketing and determination of market share for the entire multi-year period.
(15) Variances for an extended season or legal weapon choice may be obtained only on area conservation permits and must be presented to the Wildlife Board prior to the final assignment of the permit to the conservation organization.
(16) Conservation organizations may not trade or transfer multi-year permits to other organizations once assigned by the Wildlife Board.
(17) Conservation organizations failing to comply with the reporting requirements in any given year during the multi-year period shall lose the multi-year conservation permits for the balance of the multi-year award period.
(18) If a conservation organization is unable to complete the terms of marketing the assigned permits, the permits will be returned to the regular public drawing process for the duration of the multi-year allocation period.

R657-41-8. Distributing Conservation Permits.
(1) The division and conservation organization receiving permits shall enter into a contract.
(2)(a) The conservation organization receiving permits must insure that the permits are marketed and distributed by lawful means. Conservation permits may not be distributed in a raffle except where the following conditions are met:
(i) the conservation organization obtains and provides the division with a written opinion from a licensed attorney or a written confirmation by the local district or county attorney that the raffle scheme is in compliance with state and local gambling laws;
(ii) except as otherwise provided in R657-41-8(5), the conservation organization does not repurchase, directly or indirectly, the right to any permit it distributes through the raffle;
(iii) the conservation organization prominently discloses in any advertisement for the raffle and at the location of the raffle that no purchase is necessary to participate; and
(iv) the conservation organization provides the division with a full accounting of any funds raised in the conservation permit raffle, and otherwise accounts for and handles the funds consistent with the requirement in Utah Admin. Code R657-41-9.
(3) The conservation organization must:
(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and
(ii) notify the division of the proposed permit recipient

within 10 days of the recipient selection or the permit may be forfeited.

(4) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the a division drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(5) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided in Section R657-41-9;

(d) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(e) the permit has not been issued by the division to the first designated person.

(6) Except as otherwise provided under Subsections (4) and (5), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except for:

(a) elk, provided no more than two permits are obtained where one or both are antlerless permits; and

(b) turkey.

(8) the person designated on a conservation permit voucher must possess or obtain a current Utah hunting or combination license to redeem the voucher for the corresponding conservation permit.

R657-41-9. Conservation Permit Funds and Reporting.

(1) All permits must be marketed by September 1, annually.

(2) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the total funds raised on each permit;

(c) the funds due to the division; and

(d) a report on the status of each project funded in whole or in part with retained conservation permit revenue.

(3)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by September 1 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), excluding accrued interest, is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before September 1 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the Division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the revenue generated from the sale of conservation permits as follows:

(a) 10% of the revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the revenue may be retained and used by the conservation organization only for eligible projects as provided in subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other projects providing a substantial benefit to species of wildlife for which conservation permits are issued.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

(v) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

(vi) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon may be retained and used by the conservation organization for administrative expenses.

(vii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

(viii) retained revenue must be completely expended on or committed to approved eligible projects by September 1, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to commit or expend the retained revenue by the September 1 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is committed to an approved eligible project.

(ix) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project

expenditures and conservation permit accounts.

R657-41-10. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);
(b) bison (hunter's choice);
(c) buck deer;
(d) bull elk;
(e) Rocky Mountain bighorn (ram)
(f) Rocky Mountain goat (hunter's choice)
(g) bull moose;
(h) buck pronghorn;
(i) black bear;
(j) cougar; and
(k) wild turkey.

(2) The following information on sportsman permits is provided in the proclamations of the Wildlife Board for taking protected wildlife:

(a) hunt dates;
(b) open units or hunt areas;
(c) application procedures;
(d) fees; and
(e) deadlines.

(3) a person must possess or obtain a current Utah hunting or combination license to apply for or obtain a sportsman permit.

R657-41-11. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take one Merriam's and one Rio Grand turkey.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

R657-41-12. Failure to Comply.

Any conservation organization administratively or criminally found in violation of this rule or the Wildlife Resources Code may be suspended from participation in the conservation permit program and required to surrender all conservation permit vouchers.

KEY: wildlife, wildlife permits, sportsment, conservation permit

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R657. Natural Resources, Wildlife Resources.
R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.
R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;
(b) surrender of wildlife documents;
(c) refund of wildlife documents;
(d) reallocation of permits; and
(e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) Any person who has obtained a Dedicated Hunter Permit may exchange that permit for any other available Dedicated Hunter Permit as provided in Rule R657-38.

(5) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable;

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable; or

(c) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;
(b) Section 23-19-38.2 and Subsection (3); or
(c) Section 23-19-38 and Subsection (4).

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this

Section.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and CWMU permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with Rule R657-50.

(b) The division shall not allocate additional CWMU and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with Rule R657-50.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(f) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(c) The Division shall reinstate the applicant's bonus points or preference points, whichever is applicable, and waive waiting periods, if applicable, when voiding a permit in accordance with Subsection (b).

(d) A permit which is deemed void in accordance with Subsection (b) may be reissued by the Division to the next person listed on the alternate drawing list.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the proclamation of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number as listed in the Big Game proclamation.

(c) The accepted method of payment of fee is only a credit

or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the proclamation of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number as listed in the Waterfowl proclamation.

(c) The accepted method of payment of fee is only a credit or debit card.

R657-42-10. Duplicates.

(1) If an unexpired wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for a duplicate fee as provided in the fee schedule.

(2) The division may waive the fee for a duplicate unexpired wildlife document provided the person did not receive the original wildlife document.

(3) To obtain the duplicate wildlife document, the applicant may be required to complete an affidavit testifying to such loss, destruction or theft.

R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadline provided in Subsection R657-42-4(3) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits

August 7, 2007	**23-19-1**
Notice of Continuation May 14, 2003	**23-19-38**
	23-19-38.2

R657. Natural Resources, Wildlife Resources.
R657-43. Landowner Permits.
R657-43-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, this rule provides the standards and procedures for private landowners to obtain landowner permits for:

(a) taking buck deer within the general regional hunt boundary area where the landowner's property is located during the general deer hunt only; and

(b) taking bull elk, buck deer or buck pronghorn within a limited entry unit.

(2) In addition to this rule, any person who receives a landowner permit must abide by Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3) The intent of the general landowner buck deer permit is to provide an opportunity for landowners, lessees, or their immediate family, whose property provides habitat for deer, to purchase a general deer permit for the general regional hunt boundary area where the landowner's property is located.

(4) The intent of the limited entry landowner permit is to provide an opportunity for landowners, whose property provides habitat for deer, elk, or pronghorn, to be allocated a restricted number of permits for a limited entry bull elk, buck deer, or buck pronghorn unit, where the landowner's property is located. Allowing landowners a restricted number of permits:

(a) encourages landowners to manage their land for wildlife;

(b) compensates the landowner for providing private land as habitat for wildlife; and

(c) allows the division to increase big game numbers on specific units.

R657-43-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Eligible property" means:

(i) private land that provides habitat for deer, elk or pronghorn as determined by the division of Wildlife Resources;

(ii) private land that is not used in the operation of a Cooperative Wildlife Management Unit;

(iii) private land that is not used in the operation of an elk farm or elk hunting park;

(iv) land in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504; and

(v) for the purpose of receiving general buck deer permits, a minimum of 640 acres of private land owned or leased by one landowner within the general regional hunt boundary; or

(vi) private land, including crop land owned by members of a landowner association for limited entry permits.

(b) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(c) "Landowner" means any person, partnership, or corporation who owns property in Utah and whose name appears on a deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(d) "Landowner association" means an organization of private landowners who own property within a limited entry unit, organized for the purpose of working with the division.

(e) "Lessee" means any person, partnership, or corporation whose name appears as the Lessee on a written lease, for at least a one-year period, for eligible property used for farming or ranching purposes, and who is in actual physical control of the eligible property.

(f) "Limited entry unit" means a specified geographical area that is closed to hunting deer, elk or pronghorn to any person who has not obtained a valid permit to hunt in that unit.

(g) "Voucher" means a document issued by the division to a landowner, landowner association, or Cooperative Wildlife Management Unit operator, allowing a landowner, landowner association, or Cooperative Wildlife Management Unit operator to designate who may purchase a landowner big game hunting permit from a division office.

R657-43-3. Qualifications for General Landowner Buck Deer Permits.

(1) The director, upon approval of the Wildlife Board, may establish a number of general landowner buck deer permits within each region to be offered to eligible landowners or lessees for the general deer hunting season only.

(2) Only private lands will be considered in qualifying for general landowner buck deer permits. Public or state lands are not eligible.

(3) Crop lands will be considered in qualifying for general landowner buck deer permits if the crop lands provide habitat for deer and contribute to meeting unit management plan objectives.

(4) General landowner buck deer permits are limited to resident or nonresident landownersor lessees, and members of their immediate family.

R657-43-4. Qualifications for Limited Entry Permits.

(1) The Director, upon approval of the Wildlife Board, may establish a number of bull elk, buck deer and buck pronghorn limited entry permits to be offered to an eligible landowner association.

(2) Limited entry landowner permits are available for taking buck deer, bull elk or buck pronghorn, and may only be used on designated limited entry units.

(3) Only private lands that do not qualify for Cooperative Wildlife Management Units will be considered for limited entry landowner permits. Public or state lands are not eligible.

(4) Only private lands that qualify as eligible property will be considered for limited entry landowner permits.

(5) Applications for limited entry landowner permits will be received from landowner associations only.

(6) Only one landowner association, per species, may be formed for each limited entry unit as follows:

(a) A landowner association may be formed only if a simple majority of landowners, representing 51 percent of the eligible private lands within the herd unit, enter into a written agreement to form the association.

(b) The association may not unreasonably restrict membership to other qualified landowners in the unit.

(c) Each landowner association must elect a chairperson to represent the landowner association.

(d) The landowner association chairperson shall act as liaison with the division and the Wildlife Board.

(e) A landowner or landowner association may not restrict legal established passage through private land to access public lands for the purpose of hunting.

R657-43-5. Application for General Landowner Buck Deer Permits.

(1) Applications for general landowner buck deer permits are available from division offices.

(2) Only one eligible landowner or lessee may submit an application for the same parcel of land within the respective general regional hunt boundary area.

(3) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(4) Applications must include:

(a) total acres owned within the respective general regional hunt boundary area;

(b) signature of the landowner; and

(c) location of the private lands, acres owned, county and region.

(5) In cases where the landowner's or lessee's land is in more than one general regional hunt boundary area, the landowner or lessee may select one of those regions from which to receive the permit.

(6) a non-refundable handling fee must accompany each application.

(7) a landowner may not apply for or obtain a general landowner buck deer permit without possessing a Utah hunting or combination license.

(8) Applications will be available by January 7.

(9) Applications must be completed and returned to the regional division office.

(10) The signature on the application will serve as an affidavit certifying ownership.

R657-43-6. Application for Limited Entry Permits.

(1) Applications for limited entry landowner permits are available from division offices and from division wildlife biologists.

(2) Applications to receive limited entry landowner permits must be submitted by a landowner association for lands within the limited entry hunt unit where the private lands are located.

(3) Applications must include:

(a) total acres owned by the association within the limited entry hunting unit and a map indicating the privately owned big game habitat;

(b) signature of each of the landowners within the association including acres owned, with said signature serving as an affidavit certifying ownership;

(c) a distribution plan for the allocation of limited entry permits by the association;

(d) a copy of the association by-laws; and

(e) a non-refundable handling fee.

(4) The division shall, upon request of the applicant, provide assistance in preparing the application.

(5) Applications must be completed and returned to the appropriate division office by September 1 annually.

(6) The division shall forward the application and other documentation to the Regional Wildlife Advisory Councils for public review.

(7) Recommendations by the Councils will then be forwarded to the Wildlife Board for review and action.

(8) Upon approval by the Wildlife Board, a Certificate of Registration will be issued to the landowner association.

R657-43-7. General Permits and Season Dates.

(1) The following number of general landowner buck deer permits may be available to a landowner or lessee:

(a) one general landowner buck deer permit may be issued for eligible property of 640 acres; and

(b) one additional general landowner buck deer permit may be issued for each additional 640 acres of eligible property.

(c) If an individual has both owned and leased eligible property, the acreage may be combined in determining the number of permits to be issued.

(2) Permittees may select only one general landowner buck deer permit (archery, rifle or muzzleloader) as provided in the proclamation of the Wildlife Board for taking big game.

(3)(a) General landowner buck deer permits are for personal use only and may not be transferred to any other person.

(b) If the landowner or lessee is a corporation, the person eligible for the permit must be a shareholder, or immediate family member of a shareholder, designated by the corporation.

(4) Any person who is issued a general landowner buck deer permit under this rule is subject to all season dates, weapon restrictions and any other regulations as provided in the proclamation of the Wildlife Board for taking big game.

(5) The fee for a general landowner buck deer permit is the same as the fee for a general season, general archery or general muzzleloader buck deer permit.

(6) Nothing in this rule shall be construed to allow any person to obtain more than one general buck deer permit from any source or take more than one buck deer during any one year.

(7) Permits will be issued beginning in June, in the order that applications are received, and permits will continue to be issued until all permits for each region have been issued.

(8) to receive a general landowner buck deer permit, the eligible person must possess or obtain a Utah hunting or combination license.

R657-43-8. Limited Entry Permits and Season Dates.

(1) Only bull elk, buck deer or buck pronghorn limited entry permits may be applied for by the landowner association.

(2)(a) The division and landowner chairperson shall jointly recommend the number of permits to be issued to the landowner association.

(b) When consensus between the landowner chairperson and the division is not reached, applications shall include justification for permit numbers for review by the Wildlife Regional Advisory Councils and the Wildlife Board.

(3) Permit numbers shall fall within the herd unit management guidelines. Permit numbers will be based on:

(a) the percent of private land big game habitat within the unit that is used by wildlife; or

(b) the percentage of use by wildlife on the private lands.

(4) Landowners receiving vouchers may personally use the vouchers or reassign the vouchers to any legal hunter.

(5) All landowners who receive vouchers, and transfer the vouchers to other hunters must:

(a) allow those hunters receiving the vouchers access to their private lands for hunting; and

(b) allow the same number of public hunters with valid permits, equal to the number of vouchers transferred, to access the landowner association's private land for hunting during the appropriate limited entry bull elk, buck deer or buck pronghorn hunting season, except as provided in Subsection (6).

(6)(a) Landowners who transfer vouchers to other hunters may deny public hunters access to the landowner association's private land for hunting by requesting, through the landowner association, a variance to Subsection (5)(b) from the Wildlife Board.

(b) The requested variance must be provided by the landowner association in writing to the division 30 days prior to the appropriate Regional Advisory Council meeting scheduled to review Rule R657-5 and the Bucks, Bulls and Once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

(c) The variance request must be presented by the landowner association to the appropriate local Regional Wildlife Advisory Council. The local Regional Wildlife Advisory Council shall forward a recommendation to the Wildlife Board for consideration and action.

(7)(a) Any person who is issued a limited entry landowner permit must follow the season dates, weapon restrictions and any other regulations governing the taking of big game as specified in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) to receive a limited entry landowner permit, the person designated on the voucher must possess or obtain a Utah hunting or combination license.

(8) A limited entry landowner permit authorizes the permittee to hunt within the limited entry unit where the eligible property is located.

(9) Nothing in this rule shall be construed to allow any person, including a landowner, to take more than one buck deer,

one bull elk or one buck pronghorn during any one year.

R657-43-9. Limited Entry Permit Allocation and Fees.

(1) Upon approval of the Wildlife Board, the division shall issue vouchers to landowner associations that may be used to purchase limited entry permits from division offices.

(2) The fee for any limited entry landowner permit is the same as the cost of similar limited entry buck deer, bull elk or buck pronghorn limited entry permits.

R657-43-10. Limited Entry Permit Conflict Resolution.

(1)(a) If landowners representing a simple majority of the private land within a landowner association are not able to resolve any dispute or conflict arising from the distribution of permits or other disagreement within its discretion and arising from the operation of the landowner association, the permits allocated to the landowner association shall be made available to the general public by the division.

(b) Landowner associations may be eligible to receive landowner permits in subsequent years if the landowner association resolves the conflict or dispute by a simple majority of the landowners.

(2) The division shall not issue landowner permits to a landowner association that has not complied with the provisions of this rule.

KEY: wildlife, landowner permits, big game seasons
August 7, 2007 23-14-18
Notice of Continuation March 13, 2007 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-44. Big Game Depredation.
R657-44-1. Purpose and Authority.

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

(1) the procedures, standards, requirements, and limits for assessing big game depredation; and

(2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit" means a nontransferable hunting permit issued directly to a landowner or lessee, authorizing the landowner or lessee to take specified big game animals for personal use within a designated area.

(h) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(i) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

(a) orally to expedite a field investigation; or

(b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

(i) removing the big game animals causing depredation; or

(ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary or permanent fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk;

(C) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(D) the Mitigation Permit Hunting License does not authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

(a) the landowner or lessee; or

(b) a landowner association that:

(i) applies in writing to the division;

(ii) provides a map of the association lands;

(iii) provides signatures of the landowners in the association; and

(iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation

permits or mitigation permit vouchers issued for antlered animals.

(b) A mitigation permit may be issued to the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.

(1) The landowner or lessee is authorized to kill big game animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Section 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation Hunts for Buck Deer, Bull Elk or Buck Pronghorn.

(1)(a) Buck deer, bull elk, or buck pronghorn depredation hunts, that are not published in the proclamation of the Wildlife Board for taking big game, may be held.

(b) Buck deer, bull elk, or buck pronghorn depredation hunts may be held when the buck deer, bull elk, or buck pronghorn are:

(i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;

(ii) a significant public safety hazard; or

(iii) causing a nuisance in urban areas.

(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing an unfilled limited entry buck deer, bull elk, or buck pronghorn permit for that limited entry unit;

(b) hunters from the alternate drawing list for that limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(4) Post-season depredation hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(5) A person may participate in the depredation hunter pool, for depredation hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, or buck pronghorn depredation hunt must possess an unfilled, valid, limited entry buck deer, bull elk, or buck pronghorn permit for the species to be hunted, or must purchase the appropriate depredation permit before participating in the depredation hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, or buck pronghorn harvested during a depredation hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation permits for buck deer, bull elk, or buck pronghorn may not possess any other permit for

those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, or buck pronghorn in one calendar year.

R657-44-8. Depredation Hunts for Antlerless Deer, Elk or Doe Pronghorn.

(1) When deer, elk, or pronghorn are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private land, antlerless hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or doe pronghorn permit may purchase an appropriate permit.

(4) Hunters with depredation permits for antlerless deer, elk, or doe pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

R657-44-9. Depredation Hunter Pool.

(1) When deer, elk or pronghorn are causing damage, hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) Applications must be sent to the appropriate regional division office for the area requested.

(5)(a) Applications must be received by the date published in the proclamation of the Wildlife Board for taking big game.

(b) Applications received after the date published in the proclamation of the Wildlife Board for taking big game may be used if adequate numbers of applicants are not available to satisfy depredation situations.

(6) Hunters who have not obtained the appropriate deer, elk, or pronghorn permit may purchase an appropriate permit.

R657-44-10. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

R657-44-11. Hunting or Combination License Required.

(1) A person must possess or obtain a Utah hunting or combination license to receive a big game mitigation permit or depredation permit pursuant to this rule.

(a) a hunting or combination license must be possessed or purchased by the person redeeming a mitigation permit voucher for the corresponding permit.

(b) under circumstances where the division issues a depredation permit, the designated recipient must possess or purchase a Utah hunting or combination license to receive the permit.

KEY: wildlife, big game, depredation

August 7, 2007	**23-16-2**
Notice of Continuation June 20, 2007	**23-16-3**
	23-16-3.5

R657. Natural Resources, Wildlife Resources.
R657-54. Taking Wild Turkey.
R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

R657-54-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(d) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(e) "Essential habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(f) "Immediate family" means the landowner's lessee, or landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(g) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(h) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(i) "Open season" means the days when upland game may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(j) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-54-3. Application Procedure for Wild Turkey.

(1)(a) Applications are available from Division offices, license agents, and the Division's Internet address. Applications must be submitted by the date prescribed in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) Residents and nonresidents may apply.

(2)(a) Group applications for wild turkey will not be accepted.

(b) Applicants may select up to three hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(c) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(d) To apply for a resident permit, a person must be a resident at the time of purchase.

(e) The posting date of the drawing shall be considered the purchase date of a permit.

(3)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(4)(a) Applications completed incorrectly or received after the date prescribed in the Turkey Proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(5)(a) Late applications, received by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey, will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) reevaluation of Division and third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fees paid will not be refunded and license will be issued. Any permit fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey shall not be processed and shall be returned to the applicant.

(d) A turkey permit allows a person using any legal weapon as provided in Section R657-54-7 to take one bearded turkey within the area and season specified on the permit.

(6) Each application must include:

(a) the nonrefundable handling fee;

(b) the limited entry turkey permit fee; and

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(7) Applicants will be notified by mail or e-mail of drawing results. The drawing results will be posted on the Division's Internet address by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(8) Any permits remaining after the drawing are available on the date published in the Turkey Proclamation on a first-come, first-served basis from division offices and participating online license agents.

(9)(a) An applicant may withdraw their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the Turkey proclamation of the Wildlife Board for taking wild turkey.

(c) Handling fees and hunting or combination license fees will not be refunded.

(10)(a) An applicant may amend their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

R657-54-4. Waiting Period for Wild Turkey.

(1)(a) Any person who obtained a turkey permit during the preceding two years may not apply for or obtain a turkey permit for the current year, except as provided in Subsections (c) and

(d).

(b) Any person who obtains a turkey permit in the current year, may not apply for or obtain a turkey permit for two years, except as provided in Subsections (c) and (d).

(c) Waiting periods do not apply to the purchase of turkey permits remaining after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in the following two years.

(d) Waiting periods do not apply to conservation permits or landowner permits.

R657-54-5. Bonus Points for Wild Turkey.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application when applying for a permit in the turkey drawing; or

(b) a valid application when applying for a bonus point in the turkey drawing.

(2)(a) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(b) A person may apply for one turkey bonus point each year, except a person may not apply in the drawing for both a turkey permit and a turkey bonus point in the same year.

(c) Group applications will not be accepted when applying for bonus points.

(3) A bonus point shall not be awarded for an unsuccessful landowner application.

(4)(a) Each applicant receives a random drawing number for:

(i) the current valid turkey application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(5)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(6) Bonus points are forfeited if a person obtains a wild turkey permit, except as provided in Subsection (7).

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a Conservation Permit or Sportsman Permit;

(b) a person obtains a Landowner Permit; or

(c) a person obtains a Poaching-Reported Reward Permit.

(8) Bonus points are not transferable.

(9) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

R657-54-6. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the Turkey Proclamation of the Wildlife Board for taking wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-54-3.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(b) Landowner permit applications will not be accepted through the Internet.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Proclamation of the Wildlife Board for taking wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-7. Firearms and Archery Tackle.

Wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no

smaller than 20 gauge, firing shot sizes between BB and no. 6.

R657-54-8. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking wild turkey.

R657-54-9. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-54-10. Falconry.

Falconers may not release a raptor on wild turkey.

R657-54-11. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-12. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-13. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-14. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-15. Identification of Species and Sex.

The head and beard must remain attached to the carcass of wild turkey while being transported.

R657-54-16. Use of Dogs.

(1) Dogs may be used to locate and retrieve wild turkey during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

R657-54-17. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

(1) Salt Lake Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting wild turkey only during designated turkey hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to wild turkey hunting.

(c) Goshen Warm Springs is closed to wild turkey hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-54-18. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-19. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-54-20. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or

(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-21. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-22. Wild Turkey Poaching Reported Reward

Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-23. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the Turkey Proclamation of the proclamation of the Wildlife Board for taking wild turkey.

R657-54-24. Youth Hunting.

(1)(a) Up to 15 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 18 years of age or younger on the posting date of the wild turkey drawing.

(2)(a) Youth hunters who wish to participate in the youth limited entry wild turkey permit drawing must submit an application in accordance with Section R657-54-3.

(b) Youth who apply for a turkey permit in accordance with Section R657-54-3, will automatically be considered in the youth permit drawing based on their birth date.

(3)(a) Bonus points shall be used when applying for youth turkey permits in accordance with Section R657-54-5.

(b) Waiting periods will be incurred in accordance with Section R657-54-4.

KEY: wildlife, wild turkey, game laws
August 7, 2007 **23-14-18**
23-14-19

R657. Department of Natural Resources, Wildlife Resources.
R657-55. Wildlife Convention Permits.
R657-55-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife convention permits.

(2) Wildlife convention permits and the corresponding wildlife convention permit vouchers are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities.

(3) The selected conservation organization shall distribute the wildlife convention permit vouchers through a drawing at a convention held in Utah.

(4) This rule is intended as authorization to issue one series of wildlife convention permits per year beginning in 2007 through 2011 to one qualified conservation organization.

R657-55-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, corporation, foundation, or association founded for the purpose of promoting wildlife conservation.

(b) "Wildlife Convention" means a multi-day event held within the state of Utah that is sponsored by multiple wildlife conservation organizations as their national or regional convention or event that is open to the general public and designed to draw nationwide attendance of more than 10,000 individuals. The wildlife convention may include wildlife conservation fund raising activities, outdoor exhibits, retail marketing of outdoor products and services, public awareness programs, and other similar activities.

(c) "Wildlife Convention Permit" means a permit which:

(i) is authorized by the Wildlife Board to be issued to successful applicants through a drawing or random selection process conducted at a Utah wildlife convention; and

(ii) allows the permittee to hunt for the designated species on the designated unit during the respective season for each species as authorized by the Wildlife Board.

(d) "Wildlife Convention Permit series" means a single package of permits to be determined by the Wildlife Board for:

(i) deer;
(ii) elk;
(iii) pronghorn;
(iv) moose;
(v) bison;
(vi) rocky mountain goat;
(vii) desert bighorn sheep;
(viii) rocky mountain bighorn sheep;
(ix) wild turkey;
(x) cougar; or
(xi) black bear.

(e) "Wildlife convention permit voucher" means the official document awarded to a successful wildlife convention permit applicant, which authorizes that person to receive from the division the permit designated thereon upon receipt of the applicable permit fee and verifying the person's eligibility to legally hunt the specified species in Utah.

R657-55-3. Wildlife Convention Permit Allocation.

(1) The Wildlife Board may allocate wildlife convention permits by May 1 of the year preceding the wildlife convention.

(2) Wildlife convention permit vouchers shall be issued as a single series to one conservation organization.

(3) The number of wildlife convention permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) a percentage of the permits available to nonresidents in the annual big game drawings matched by an equal number of resident permits.

(4) Wildlife convention permits shall not exceed 200 total permits.

(5) Wildlife convention permits designated for the convention each year shall be deducted from the number of public drawing permits.

R657-55-4. Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division July 1 through August 1, 2005.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit voucher drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) benefit to protected wildlife;

(c) historical contribution of the organization, including its constituent entities, to the conservation of wildlife; and

(d) previous performance of the conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each applicant to possess a current Utah hunting or combination license before allowing them to apply for a convention permit.

(b) distribute the wildlife convention permit vouchers by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for the wildlife convention permit vouchers without purchasing admission to the wildlife convention;

(d) notify the division of the recipient of each wildlife convention permit voucher within 10 days of the recipient's selection;

(e) maintain records demonstrating that the drawing was

conducted fairly; and

(f) submit to wildlife convention permit series audits by a division-appointed auditor upon division request.

(9) The division shall issue the appropriate wildlife convention permit to the designated recipient of the wildlife convention permit voucher upon the recipient being found eligible for the permit and the payment of the appropriate permit fee.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permit vouchers at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

R657-55-5. Hunter Application Procedures.

(1) Any hunter legally eligible to hunt in Utah may apply for a permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed $5 per application submitted at the convention.

(3) Applicants must be present in person at the wildlife convention to apply for wildlife convention permits, and no person may submit an application in behalf of another.

(4) Applicants may apply for each individual hunt.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a permit.

R657-55-6. Drawing Procedures.

(1) A random drawing or selection process must be conducted for each wildlife convention permit voucher.

(2) No preference or bonus points shall apply or be awarded in the drawings.

(3) Waiting periods do not apply, except any person who obtains a wildlife convention permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) No predetermined quotas or restrictions shall be imposed in the application or selection process for wildlife convention permit vouchers between resident and nonresident applicants.

(5) Drawings will be conducted at the close of the convention.

(6) Applicants do not have to be present at the drawing to be awarded the wildlife convention permit voucher.

(7) The conservation organization shall draw ten alternates for each wildlife convention permit and maintain the list of alternates until all permits are issued and then provide the list to the division.

(8) The conservation organization shall contact successful applicants by phone or mail, and the results posted on a designated website.

R657-55-7. Issuance of Permits.

(1) The division shall provide a wildlife convention permit voucher to the conservation organization for each wildlife convention permit to be issued.

(2) The conservation organization must provide a wildlife convention permit voucher to each successful applicant, except as otherwise provided in this rule.

(3) Successful applicants must provide the wildlife convention permit voucher to the division and, if legally eligible to hunt in Utah, will be issued the designated wildlife convention permit upon payment of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license.

(4) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(5) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(6)(a) Any successful applicant who fails to redeem their wildlife convention permit voucher by the dates provided in Subsection (b) annually, will be ineligible to receive the wildlife convention permit and the next drawing alternate for that permit will be selected.

(b) A wildlife convention permit voucher must be redeemed by:

(i) November 15 for cougar;

(ii) February 1 for wild turkey and bear; and

(iii) August 1 for deer, elk, pronghorn, moose, bison, rocky mountain goat, desert bighorn sheep, and rocky mountain bighorn sheep.

R657-55-8. Surrender or Transfer of Wildlife Convention Permits and Vouchers.

(1)(a) If a person selected to receive a wildlife convention permit is also successful in obtaining a Utah limited entry permit for the same species in the same year or obtaining a general permit for a male animal of the same species in the same year, that person cannot possess both permits and must select the permit of choice.

(b) In the event the wildlife convention permit voucher is surrendered, the next applicant on the alternate drawing list for that wildlife convention permit will be selected to receive the wildlife convention permit voucher.

(c) In the event the wildlife convention permit voucher is redeemed for a wildlife convention permit and the permit is thereafter surrendered, the next applicant on the alternate drawing list for that permit will be selected to receive the permit, and the permit fee will not be refunded, except as provided in Sections 23-19-38 and 23-19-38.2.

(d) In the event the limited entry or general permit is surrendered, the permit may be reallocated pursuant to Rule R657-42, and the permit fee will not be refunded, except as provided in Sections 23-19-38 and 23-19-38.2.

(2) If a person is successful in obtaining more than one wildlife convention permit for the same species, the applicant must select the permit of choice and the remaining permit will go to the applicant on the alternate drawing list.

(3) A person selected by a conservation organization to receive a wildlife convention voucher or permit, may not sell or transfer the voucher, permit, or any rights thereunder to another person in accordance with Section 23-19-1.

(4) If a person is successful in obtaining a wildlife convention permit but is legally ineligible to hunt in Utah the next applicant on the alternate drawing list for that permit will be selected to receive the permit.

R657-55-9. Using a Wildlife Convention Permit.

(1) A wildlife convention permit allows the recipient to:

(a) take only the species for which the permit is issued;

(b) take only the species and sex printed on the permit; and

(c) take the species only in the area and during the season

specified on the permit.

(2) The recipient of a wildlife convention permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

KEY: wildlife, wildlife permits
August 7, 2007 **23-14-18**
23-14-19

R657. Natural Resources, Wildlife Resources.
R657-56. Recreational Lease of Private Lands for Free Public Walk-in Access.
R657-56-1. Purpose and Authority.

Under the authority of Sections 23-14-3(2), -18, and 23-14-19, this rule provides the procedures, standards, and requirements to administer a walk-in access program in the State of Utah to compensate private landowners for a recreational lease of their property for allowing free public walk-in access to fish, hunt, or trap.

R657-56-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Private landowner" means any individual, partnership, corporation, or association that possesses the legal right on private property to grant a recreational lease.

(b) "Recreational lease activities" means recreation limited to fishing, hunting or trapping as provided in the recreational lease agreement.

(c) "WIA" means walk-in access.

(d) "WIFA" means walk-in fishing access, which provides free public access to fish waters located on private property as provided in the recreational lease agreement, and includes trapping when the landowner designates this activity in the WIFA recreational lease agreement.

(e) "WIHA" means walk-in hunting access, which provides free public access to hunt private property as provided in the recreational lease agreement, and includes trapping when the landowner designates this activity in the WIHA recreational lease agreement.

(f) "Contiguous block" means a polygon of land that is connected as a single mass.

R657-56-3. Walk-In Access Enrollment Procedures.

(1) A private landowner with eligible property may participate in the WIA program.

(2) A private landowner interested in participating in the WIA program must submit an enrollment form to the appropriate division office by March 1, and provide:

(a) evidence of property ownership, or if leasing the private property a copy of the lease agreement; and

(b) the private landowner's signature.

(3) Enrollment forms are available at the appropriate division office or through the division's web site.

R657-56-4. Walk-In Access Recreational Lease Agreement.

(1) The division and private landowner shall prepare and agree to the terms in a WIA recreational lease agreement by May 1.

(2) Terms in the WIA recreational lease agreement shall include private landowner and division responsibilities, including the provisions as provided in Sections R657-56-8 and R657-56-9, and compensation necessary to provide free public access for fishing, hunting, or trapping on private property.

(3) The amount of compensation to be paid to the private landowner participating in the WIA program shall be determined by:

(a) the type of recreational lease activity allowed on the private property;

(b) the duration of the recreational lease agreement; and

(c) the number of acres of private land or pond, or miles of stream or river available for free public walk-in access.

(4) Upon mutual agreement, the division may provide in-kind habitat improvement materials or labor on WIA property in lieu of monetary payment to the landowner for free public walk-in access.

R657-56-5. Walk-In Hunting Access Program Requirements.

(1) Private property enrolled in the WIHA Program must provide suitable wildlife habitat to support the recreational lease activity described in the WIHA recreational lease agreement, and:

(a) contain no less than an 80 acre contiguous block of land;

(b) contain no less than a 40 acre contiguous block of wetland or riparian land; or

(c) provide an access corridor to comparable tracts of isolated public land open to free public hunting or trapping.

(2)(a) Division personnel shall evaluate proposed WIHA property to determine if the property provides suitable wildlife habitat and wildlife for the designated recreational lease activity.

(b) If the property is approved for the designated recreational lease activity, the division and private landowner may enter into the WIHA recreational lease agreement as provided in Section R657-56-4.

R657-56-6. Walk-In Fishing Access Requirements.

(1) Private property enrolled in the WIFA Program must provide suitable fishing waters and fish to support the recreational lease activity described in the WAFA recreational lease agreement, and:

(a) contain a minimum 0.25 miles of stream or river;

(b) contain a minimum 5 acres of pond; or

(c) the property provides an access corridor to comparable fishing waters on isolated public land open to public fishing.

(2)(a) Division personnel shall evaluate proposed WIFA property to determine if the property provides suitable fishing waters and fish.

(b) If the property is approved for the designated recreational lease activity, the division and private landowner may enter into the WIFA recreational lease agreement as provided in Section R657-56-4.

R657-56-7. Walk-In Hunting and Fishing Access Compensation.

(1) The amount of compensation payment to a landowner is determined by the acreage that will be used for the WIA program, and the recreational lease activity allowed on the private property using the base rate fee as provided in the recreational lease agreement.

(2) A bonus fee will be added to the base rate fee when a private landowner initially enrolls private property in the recreational lease agreement for additional consecutive years as follows:

(a) five percent will be added for two years; or

(b) ten percent will be added for three years.

R657-56-8. Walk-In Access Program Landowner Responsibilities.

(1) Each private landowner enrolled in the WIA program must provide:

(a) free public walk-in access for recreational lease activities as provided in the recreational lease agreement; and

(b) private land with suitable wildlife habitat to support the recreational lease activity; or

(c) an access corridor to comparable tracts of isolated public land open to free public fishing, hunting or trapping.

(2) Each private landowner must indicate the type of landowner authorization required for the public to use the WIA for fishing, hunting, or trapping, as follows:

(a) authorization is not required to access the property;

(b) registration at a WIA site is required prior to accessing the property; or

(c) contacting the landowner is required prior to accessing the property.

(3) The private landowner must transfer to the division,

the recreational lease of their property for the recreational lease activities designated in the WIA recreational lease agreement.

R657-56-9. Walk-In Access Program Division Responsibilities.

The division shall provide:

(1) evaluations of wildlife habitat, and wildlife on the proposed WIA property as provided in Subsections R657-56-5(2)(a) or R657-56-6(2)(a);

(2) WIA recreational lease agreement forms;

(3) WIA registration forms and boxes when applicable;

(4) signs for enrolled WIA property;

(5) law enforcement during applicable fishing, hunting, or trapping seasons;

(6) maps of approved and enrolled WIA locations and requirements as provided in the recreational lease agreement; and

(7) compensation payments to landowners following successful completion of the terms of the WIA recreational lease agreement.

R657-56-10. Termination of Walk-In Access Recreational Lease Agreement.

(1) The WIA recreational lease agreement may be:

(a) terminated for any reason by either party upon 30 days written notice; or

(b) amended at any time upon written agreement by the landowner and the division.

(2) If a WIA recreational lease agreement is terminated as provided in Subsection (1)(a), prior to the ending date specified in the recreational lease agreement, the compensation payment fee shall be prorated based upon the recreational lease activity provided and the number of days that access was provided.

(3) Restriction of public use by the landowner of the private property enrolled in the WIA program in violation of the recreational lease agreement may void all or a portion of the WIA recreational lease agreement.

(4) Any change in private landownership of enrolled WIA property may terminate the WIA recreational lease agreement.

(5) Misrepresentation of enrolled private property in the WIA program shall terminate the WIA recreational lease agreement.

R657-56-11. Liability Protection for Walk-In Access Private Landowner.

Landowner liability may be limited when free public access is allowed on private property enrolled in the WIA program for the purpose of any recreational lease activities as provided in Title 57, Chapter 14 of the Utah Code.

R657-56-12. Licenses, Permits and Seasons.

(1) Any person accessing WIA private lands to fish, hunt, or trap must obtain and possess the required valid license or permit for the recreational lease activity, and must adhere to the respective rules and proclamations established by the Wildlife Board.

(2)(a) If enrolled WIA property requires prior private landowner authorization or any other requirement as provided in the recreational lease agreement, any person entering enrolled WIA private lands to fish, hunt, or trap must comply with said requirements.

(b) The division shall provide to the public maps of approved and enrolled WIA locations and requirements as determined in the recreational lease agreement.

R657-56-13. Right to Deny Access.

The division or the private landowner reserves the right to deny a person access to the WIA property described in the recreational lease agreement for causes related to, but not limited to, intoxication, damage to WIA property, violations of conditions provided in the recreational lease agreement, or any wildlife violation committed on WIA property.

R657-56-14. Prohibited Activities.

(1) It is unlawful for any person to access WIA property in violation of the recreational lease agreement, or refuse to leave WIA property when requested by the landowner, a division representative, or a peace officer.

(2) Any person accessing WIA property in violation of Subsection (1) may further be subject to criminal trespass prosecution as provided in Sections 23-20-14 and 76-6-206.

R657-56-15. Walk-In Access Advisory Committee.

(1) A WIA Advisory Committee shall be created consisting of five members nominated by the five division Supervisors, and approved by the Director.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two agricultural representatives;

(c) one elected official; and

(d) the division's Wildlife Section Chief, or designee.

(3) The committee shall be chaired by the Wildlife Section Chief, or designee, who shall be a non-voting member.

(4) The committee will:

(a) hear complaints dealing with fair and equitable treatment of anglers, hunters, or trappers on enrolled WIA property;

(b) hear complaints dealing with fair and equitable treatment of WIA private landowners; and

(c) make advisory recommendations to the Director.

(5) The Wildlife Section Chief shall determine the agenda, time, and location of the WIA Advisory Committee meetings.

(6) The director may mitigate or resolve issues dealing with complaints.

(7) Members of the advisory Committee shall serve a term of four years, except members may be appointed for a term of two years to ensure that the term of office are staggered.

(a) The Wildlife Section Chief is not subject to a term limitation.

KEY: wildlife, private landowners, public access
August 7, 2007 **23-14-18**
23-14-19
57-14-1

R690. Public Education Job Enhancement Program, Job Enhancement Committee.

R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements.

R690-100-1. Definitions.

A. "Advancement Award/scholarship recipient" means a scholarship to an educator qualified under Sections 53A-1a-601 (1) and (2) (a) and (b). The scholarship may be used for:

(1) training in subject areas designated in Section 53A-1a-601(1); and

(2) tuition costs only as designated in Section 53A-1a-601(2)(b) for a master's degree, teaching endorsement, or approved graduate program including National Board Certification.

B. "Contract" means a binding agreement signed and agreed to by the recipient, the PEJEP Committee and USOE under 53A-1a-602(3)(c); applications are available through the USOE and online through the USOE website at www.schools.utah.gov.

C. "Critical areas of educator need" means secondary school teachers with expertise in mathematics, physics, chemistry, physical science, learning technology, or information technology PreK-12 special education teachers, educators seeking math endorsements in fourth, fifth, and sixth grade with a Level 1 or Level 2 license with an elementary or secondary area of concentration, and occupational therapists.

D. "Information technology" for purposes of this rule means courses in information support and services, interactive media, network systems and programming, and software development as listed under information technology education in career and technical education (CTE) on the USOE website.

E. "Learning technology" for the purpose of this rule means a degree/endorsement earned to implement use of technology in classrooms by secondary school teachers in the critical areas of educator need identified under R690-100-1C.

F. "Letter of authorization" under Section 53A-la-601(3) means a designation given to an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements for the course(s) he teaches, who is employed by a school district, who has an educator license under R277-502.

G. "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.

H. "Opportunity Award/signing bonus/cash award recipient" means a cash award paid in two installments to qualified educators under 53A-1a-601(2) (c) and (3)(a) and (b).

I. "Public Education Job Enhancement Program Committee (Committee)" means the committee designated under Section 53A-la-602.

J. "Public Education Job Enhancement Program (PEJEP)" means a program authorized under Section 53A-la-601.

K. "Special education teacher" means an educator who teaches at least three classes (or fifty percent of the school day) of primarily PreK-12 special education students or whose contract assignment is designated by the district as SPECIAL EDUCATION. Special education teacher may also mean speech and language pathologists and psychologists and special education educators teaching grade 12+ in a high school.

L. "Technology training" for the purpose of this rule means professional development training to public school superintendents, administrators, and principals in the effective use of technology in public schools.

M. "USOE" means the Utah State Office of Education.

R690-100-2. Authority and Purpose for Opportunity and Advancement Awards.

A. The rule is authorized under Section 53A-la-602(5) which requires the Committee to make a rule establishing policies and procedures for:

(1) designating the recipients and offering scholarships and cash awards from PEJEP funding;

(2) timelines for the submission and approval of applications;

(3) the distribution of the awards and scholarships; and

(4) monitoring educator progress and compliance with the law and this rule.

B. The purpose of this rule is to provide policies and procedures for participation in the Public Education Job Enhancement Program.

R690-100-3. Opportunity Awards.

A. Timelines for Opportunity Awards

(1) The Committee shall provide to all public school district superintendents and charter schools, by June 1 of each year, teacher information forms and funds available for Opportunity Awards consistent with critical areas of educator need identified under R690-100-1C.

(2) Information forms for awards shall also be available from the USOE and on-line through the USOE website.

(3) Completed information forms for Opportunity Awards, including required documentation, shall be due to the USOE from applying school districts and charter schools by November 1 annually.

(4) Recipients of Opportunity Awards shall receive the cash award in two installments, with the first initial payment at the beginning of the four year teaching commitment and the second installment at the conclusion of four consecutive years of teaching.

(a) The recipient shall repay a portion of the initial payment if the recipient fails to complete two years of the consecutive four year teaching commitment unless waived for good cause by the Committee, designated in Section 53A-1a-602; and

(b) The recipient shall not receive the second installment if the recipient fails to complete the consecutive four year teaching commitment.

(5) The USOE shall receive documentation annually by October 1 from recipients of Opportunity Awards documenting full-time employment as educators during the previous school year.

(6) If the recipient desires to decrease his teaching employment below full-time or take a leave of absence at any time, the recipient shall submit a formal written request to the Committee. The Committee may grant or deny permission for the employment change within 30 days of the request; if permission is denied by the Committee, provisions under 53A-1a-601(1)(c)(ii) shall apply immediately.

(7) The USOE shall be immediately notified by the Opportunity Award recipient if the recipient changes employers, leaves public education, or moves from the state; provisions of 53A-1a-601(1)(c)(ii) shall apply immediately if the recipient leaves public education or leaves the state.

(8) Opportunity Award recipients shall notify the USOE at the conclusion of the recipient's consecutive four year teaching commitment.

(9) The USOE shall make the final Opportunity Award payment in a timely manner upon notification by the recipient and documentation of full-time employment during the required four year period.

B. Award and Funding Requirements for Opportunity Awards

To be eligible to receive an award under this rule, an educator shall:

(1) have signed an employment contract with a school

district or charter school;

(2) be recommended by secondary school principal, school district superintendent or designee or charter school director;

(3) be a fully licensed educator in Utah or enrolled in an alternative educator licensing program in:

(a) pre-K-12+ special education; or

(b) a secondary education endorsement program (grades 7-12) in critical areas of educator need identified under R690-100-1C; and

(4) have taught under a letter of authorization for at least one year in the areas referred to under Section 53A-1a-601(1) and received a superior evaluation as a classroom teacher.

R690-100-4. Advancement Awards.

A. Timelines for Advancement Awards

(1) Applications for Advancement Awards shall be available from the USOE and online through the USOE website.

(2) Educators may apply at any time throughout the year and may receive an award subject to funds available.

(3) Recipients of Advancement Awards shall provide documentation to the USOE at least one time during each semester that the recipient is enrolled in an approved higher education program.

(4) The USOE shall notify recipients immediately if recipients' course work or grades are unsatisfactory; recipients continued participation shall be reviewed by the Committee.

(5) Recipients shall begin taking higher education courses within one calendar year of receipt of the award.

(6) Recipients have four years to complete course work for a master's degree, teaching endorsement, or approved graduate program.

(7) Upon completion of the master's degree, teaching endorsement, or approved graduate program, a recipient shall notify the USOE and provide an official higher education transcript or appropriate documentation.

(8) Recipients of the Advancement Awards shall notify the USOE immediately if they change public education employers, drop their class loads below 3 credit hours or move from the state.

(9) If the recipient interrupts employment for any reason, the recipient shall submit a formal written letter to the Committee explaining the reason for the interruption and requesting a continuance of the contract.

B. Award and Funding Requirements for Advancement Awards

To be eligible to receive an award under this rule, an educator shall:

(1) be approved by the employing principal and the school district superintendent or designee or a charter school director and charter school board chair;

(2) be a fully licensed Utah educator or enrolled in a Utah alternative educator licensing program.

(3) agree to enroll in eligible schools or programs within one year from the date of the award;

(4) provide documentation to the Committee of acceptance into an approved graduate program, including National Board Certification, leading to a master's degree or teaching endorsement in areas identified under R690-100-1C;

(5) not use the award to pay for course work in counseling or administration.

C. Additional Recipient Requirements for Advancement Awards:

(1) Complete the program within four years from the date of initial enrollment.

(2) Complete endorsement classes in a timely manner as approved in the contract with the Committee.

(3) Successfully finish all classes for which recipient is reimbursed.

(4) Enroll and seek reimbursement only for courses leading directly to a master's degree, teaching endorsement, or approved graduate program, for which the award was made.

(5) Show evidence of progress toward master's degree, teaching endorsement, or approved graduate program, every semester for which the award is used.

(6) Recipient commits to teach in Utah public schools in an area identified in 53A-1a-601(1) for a period of four consecutive school years following the completion of the endorsement or degree for which the award was made.

D. Award Priorities for Advancement Awards

(1) Superintendent/principal recommendations

(2) Existing formal qualifications, evaluations, degrees, certificates, endorsements, licenses of educators in district/school.

(3) Applicants' discussions of career plans, educational objectives, and estimated time periods for completion of course work.

(4) Alignment of applicant career/educational objectives with intent and express purposes of Section 53A-1a-601.

R690-100-5. Enforcement and Penalty Provisions for Breach of PEJEP Contract for Opportunity and Advancement Awards.

A. If an Opportunity Award or Advancement Award recipient fails to satisfy the teaching commitment, earn the master's degree, or teaching endorsement, or complete the approved graduate program, the recipient shall be responsible to repay, as determined by the Committee, the full or a prorated amount of the cash award or scholarship fund received.

B. The entire amount of the cash award or scholarship may become due and payable immediately, including interest following review by the Committee for violations of Section 53A-1a-601 or this rule.

C. The recipient shall be responsible for any and all necessary collection costs.

D. Legal action may be taken against recipient as recommended by the Committee and approved by the USOE and the Utah Attorney General's Office.

E. A recipient may be referred to the Utah Professional Practices Advisory Committee for possible action against the recipient's license for willful violations of law or this rule.

F. Should recipient's license be suspended or revoked by the Utah State Board of Education, consistent with due process provided for in state law, the award or scholarship shall be canceled at the time of license revocation and subject to the conditions stated in R690-100-5.

G. Exceptions to any provision of the Opportunity or Advancement Award contracts shall be approved in writing by the Committee.

R690-100-6. Miscellaneous Provisions or Requirements for the Opportunity and Advancement Awards.

A. In any given school year, a teacher shall not receive both an Opportunity Award and an Advancement Award and shall not receive two Opportunity awards concurrently.

B. Recipients of the Opportunity Award and Advancement Award may not apply for a second award until the consecutive four year teaching commitment has been fulfilled.

C. Opportunity and Advancement award educators may take less than a full-time course load in the areas identified in 53A-1a-601(1), if student demand is not sufficient for a full-time assignment in those subject areas.

D. If the Opportunity or Advancement Award recipient should die before the conditions or repayment of the award is satisfied, the entire commitment or balance shall be waived.

E. The educator shall be teaching in the critical areas of educator need identified under R690-100-1C,D,and E, to apply for a PEJEP scholarship toward any learning technology degree, endorsement, or advanced degree.

F. Advancement Award Recipients taking 9 credit hours during summer months (forgoing employment during that time) may receive a $6,000 summer stipend; summer stipends shall be prorated for educators in regulated programs and those recipients may receive $2,000 per 3 credit hour, up to $6,000.

G. Endorsement caps shall be commensurate with increased tuition costs for the specific endorsement; and

H. Endorsement program recipients may receive only one summer stipend of $6,000 per 9 credit hours.

I. Teachers who have their assignment changed which takes them out of their classroom teaching in the PEJEP content areas, must submit a petition to the Committee for potential waiver of penalties associated with the change.

J. The consecutive four year teaching commitment may be met by educators who are promoted, assigned, or advised to change their teaching assignment and work within the district or state in a similar role for which the Opportunity Award or Advancement Award was made, following Committee approval.

K. Applicants are not eligible for Advancement Awards if the individuals are in their last semester of their degree or endorsement programs or if they have completed their degree, endorsement, or advanced degree program.

R690-100-7. Provisions or Requirements for the Technology Training Component of 53A-1a-601(4)(a).

Technology training courses, programs or conferences that provide professional development for public school superintendents, administrators and principals in the effective use of technology in public schools shall be submitted to the Committee by applicants for consideration and approval under 53a-1A-601(4).

KEY: scholarships, awards, educators
August 7, 2007 53A-1a-602(5)

R728. Public Safety, Peace Officer Standards and Training.
R728-410. Guidelines Regarding Failure To Obtain Annual Statutory Training.
R728-410-1. Authority.

This rule is authorized by Subsection 53-6-105(k).

R728-410-2. Suspension for Failure to Obtain Annual Statutory Training.

A. If an individual maintaining peace officer certification or authority under Title 53, Chapter 13 Utah Code Annotated, fails to obtain 40 hours of approved training as provided under Subsection 53-6-202(4), Utah Code Annotated, the peace officer's powers will be suspended until such time as the peace officer has:

1. obtained the 40 hours of training required for the deficient training year; or

2. if deficient more than one year, successfully complete the certification examination as indicated:

a. peace officers maintaining peace officer designation shall successfully complete the peace officer designation certification examination.

b. peace officers maintaining correctional officer certification or authority shall successfully complete the correctional officer certification examination.

c. peace officers maintaining peace officer certification or authority as a reserve officer and special function officer, shall successfully complete the reserve/special function officer certification examination.

d. peace officers maintaining more than one peace officer designation (i.e., correctional officer and peace officer designation; or special function officer and peace officer designation) shall be required to successfully complete the peace officer certification examination.

e. peace officers maintaining Reserve, Level II/Special Function Officer designation and Correctional Officer designation shall be required to successfully complete the certification examination applicable to their primary law enforcement employer.

f. peace officers maintaining Reserve Officer, Level I authority shall successfully complete the peace officer designation certification examination.

B. Any peace officer who fails to acquire 40 hours of approved annual training shall be prohibited from exercising peace officer powers until the required training is completed and reported to the division;

1. upon notification of deficient training by the employing agency, the division shall notify the peace officer and the employing agency before peace officer powers are suspended by the division. This will allow an opportunity for the deficient peace officer to explain the training deficiency or failure to report training to the division, and shall provide due process for the peace officer.

2. upon becoming aware that a peace officer is deficient in the 40 hour training requirement, the employing agency shall comply with (B) above.

3. peace officers who fail to acquire the 40 hours of annual training shall be notified by the division that their peace officer powers have been suspended. Notification by the division may be made orally or in writing. If notification is made orally, written notification shall be completed as soon as possible.

4. if the annual training requirement is completed and reported to the division after the suspension has been issued by the division, the peace officer shall be notified, in writing, that peace officer powers have been reinstated before the peace officer is allowed to resume peace officer duties and functions.

C. Any peace officer who fails to acquire 40 hours of training for two consecutive years will have his peace officer certification or authority designated "inactive" as per Utah Code Annotated, Section 53-6-202.

D. Any peace officer found to be exercising peace officer powers after notification from the division that peace officer powers have been suspended shall be subject to the provision of Rule R728-411.

KEY: law enforcement officers, annual training

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Notice of Continuation February 27, 2007	**53-6-202**
	53-6-211
	53-13

R746. Public Service Commission, Administration.
R746-420. Requests for Approval of a Solicitation Process.
R746-420-1. General Provisions.

(1) A Soliciting Utility filing for approval of a proposed Solicitation and Solicitation Process in accordance with the Energy Resource Procurement Act (Act) shall file a request for approval of the proposed Solicitation and Solicitation Process (Application) which shall include testimony and exhibits which provide:

(a) A description of the Solicitation Process the Soliciting Utility proposes to use;

(b) A copy of the complete proposed Solicitation with appendices, attachments and draft pro forma contracts if applicable;

(c) Information to demonstrate that the filing complies with the requirements of the Act and Commission rules;

(d) Descriptions of the criteria and the methodology, including any weighting and ranking factors, to be used to evaluate bids;

(e) Information directing parties to all questions and answers regarding the Solicitation and Solicitation Process posted on an appropriate website;

(f) Information on how participants in the pre-issuance Bidders' conference should submit advance written questions to the Soliciting Utility that are to be addressed at the pre-issuance Bidder's conference;

(g) A list of potentially interested parties to whom the Soliciting Utility has sent or will send notices of the filing of the request for approval of the proposed solicitation with the Commission; and

(h) Other information as the Commission may require.

(2) At the time of filing, or earlier if practicable, the Soliciting Utility shall provide to the Independent Evaluator, data, information and models necessary for the Independent Evaluator to analyze and verify the models.

(3) Pre Bid-Issuance Procedures. Prior to applying for approval of a proposed Solicitation:

(a) The Soliciting Utility shall give advance notice to the Commission as soon as practicable that it intends to conduct a Solicitation Process but not later than 60 days prior to the filing of the draft Solicitation and Solicitation Process to enable the Commission to promptly hire an Independent Evaluator;

(b) The Soliciting Utility shall hold a pre-issuance Bidders' conference in Utah, with both in-person and conference call participation at least 15 days prior to the time the Solicitation is filed for approval. Interested persons may attend this conference. The Soliciting Utility shall ensure that all questions and answers, made at the pre-issuance Bidder's conference, are provided or recorded in writing to the extent practicable;

(c) At the pre-issuance Bidder's conference, the Soliciting Utility should describe to the attendees in attendance the process, timeline for Commission review of the draft Solicitation and opportunities for providing input, including sending comments and/or questions to the Independent Evaluator; and

(d) No later than the date of filing of the proposed Solicitation, the Soliciting Utility shall issue a notice to potential bidders regarding the timeline for providing comments and other input regarding the draft Solicitation.

(4) Process for Approval of a Solicitation.

(a) Comments on the Soliciting Utility's Application shall be filed with the Commission within 45 days after the filing of the Application. The Independent Evaluator shall provide comments within 55 days after the filing of the Application. The Soliciting Utility shall file reply comments within 65 days after the filing of the Application.

(b) An Approved Solicitation and related documents shall be posted on an appropriate website as determined by the Commission order approving the Solicitation. Notice of the website posting of a Solicitation shall be sent to the potential bidders identified by the Soliciting Utility and as otherwise directed by the Commission.

(c) All material modifications to the terms and schedule of the Approved Solicitation must be approved by the Commission.

R746-420-3. Solicitation Process.

(1) General Requirements of a Solicitation Process.

(a) All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.

(b) A proposed Solicitation and Solicitation Process must be reasonably designed to:

(i) Comply with all applicable requirements of the Act and Commission rules;

(ii) Be in the public interest taking into consideration:

(A) whether they are reasonably designed to lead to the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of the Soliciting Utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;

(E) financial impacts on the Soliciting Utility; and

(F) other factors determined by the Commission to be relevant;

(iii) Be sufficiently flexible to permit the evaluation and selection of those resources or combination of resources determined by the Commission to be in the public interest;

(iv) Be designed to solicit a robust set of bids to the extent practicable; and

(v) Be commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules and a reasonable evaluation of resource options that can be available to fill the projected need and that will satisfy the criteria contained within Section 54-17-302(3)(c). The utility may request an expedited review of the proposed Solicitation and Solicitation Process if changed circumstances or new information require a different acquisition timeline. The Soliciting Utility must demonstrate to the Commission that the timing of the Solicitation Process will nevertheless satisfy the criteria established in the Act and in Commission rules.

(2) Screening Criteria - Screening in A Solicitation Process.

(a) In preparing a Solicitation and in evaluating bids, the Soliciting Utility shall develop and utilize, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest.

(b) Reasonable initial screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of and initial rankings based upon the following factors:

(i) Cost to utility ratepayers;

(ii) Timing of deliveries;

(iii) Point of delivery;

(iv) Dispatchability/flexibility;

(v) Credit requirements;

(vi) Level of change to pro forma contracts included in an approved Solicitation Process;

(vii) Transmission, Interconnection and Integration costs and benefits;

(viii) Commission-approved consideration of impacts of direct or inferred debt;

(ix) Feasibility, including project timing and the process for obtaining necessary rights and permits;

(x) Adequacy and flexibility of fuel supplies;

(xi) Choice of cooling technology and adequacy of water resources;

(xii) Systemwide benefits of transmission infrastructure investments associated with a project;

(xiii) Allocation of project development risks, including capital cost overruns, fuel price risk and environmental regulatory risk among project developer, utility and ratepayers; and

(xiv) Environmental impacts.

(c) In developing the initial screening and evaluation criteria, the Soliciting Utility, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, shall consider the assumptions included in the Soliciting Utility's most recent Integrated Resource Plan (IRP), any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.

(d) The Soliciting Utility may but is not required to consider non-conforming bids to the Request For Qualifications (RFQ) or Request For Proposals (RFP). The Soliciting Utility will provide advance notice to the Independent Evaluator of its decision consider a non-conforming bid.

(3) Screening Criteria - Request for Qualifications and Request of Proposals.

(a) Prior to the deadline for responding to the RFP, the Soliciting Utility may utilize a RFQ.

(b) The Independent Evaluator will provide each of the bidders with a Bid number once the Soliciting Utility, in consultation with the Independent Evaluator, has determined that the bidder has met the criteria under the RFQ.

(c) Reasonable RFQ screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of the following factors:

(i) Credit requirements and risk;

(ii) Non-performance risk;

(iii) Technical experience;

(iv) Technical and financial feasibility; and

(v) Other reasonable screening criteria that are applied in a fair, reasonable and nondiscriminatory manner.

(d) The RFQ should instruct each potential bidder to state in its RFQ response whether it is an affiliate of the Soliciting Utility or will contract with an affiliate of the Soliciting Utility.

(4) Disclosures. If a Solicitation includes a Benchmark Option, the Solicitation shall include at least the following information and disclosures:

(a) Whether the Benchmark Option will or may consist of a Soliciting Utility self-build or owned option (Owned Benchmark Resource) or if it is a purchase option (Market Benchmark Resource);

(b) If an Owned Benchmark Option is used, a description of the facility, fuel type, technology, efficiency, location, projected life, transmission requirements and operating and dispatch characteristics of the Owned Benchmark Option. If a Market Benchmark Option is used, the Soliciting Utility must disclose that a market option will be utilized and any inputs that will be utilized in the evaluation;

(c) A description and examples of the manner in which resources of differing characteristics or lengths will be evaluated;

(d) That bids will receive Bid numbers from the Independent Evaluator. The blinded personnel will not have access to any information concerning the relationship between the Bid numbers and the Blinded bids until after selection of the final short list;

(e) Assurances that resource evaluations will be conducted in a fair and non-preferential manner in comparison to the Benchmark Option;

(f) Assurances that the Benchmark Option will be validated by the Independent Evaluator and that no changes to any aspect of the Benchmark Option will be permitted after the validation of the Benchmark Option by the Independent Evaluator and prior to the receipt of bids under the RFP and that the Benchmark Option will not be subject to change unless updates to other bids are permitted; and

(g) Assurances that the non-blinded personnel will not share any non-blinded information about the bidders with employees or agents of a Soliciting Utility or its affiliates who are or may be involved in the development of a Solicitation, the evaluation of bids, or the selections of resources (Evaluation Team) until after selection of the final shortlist.

(5) Disclosures Regarding Evaluation Methodology. A Solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids, including a complete description of:

(a) All evaluation procedures, factors and weights to be considered in the RFQ, initial screening and final evaluation of bids;

(b) Credit and security requirements;

(c) Pro forma power purchase and other agreements; and

(d) The Solicitation schedule.

(6) Disclosures Regarding Independent Evaluator. The Solicitation shall describe the Independent Evaluator's role in a manner consistent with Section 54-17-203, including:

(a) An explanation of the role of the Independent Evaluator;

(b) Contact information for the Independent Evaluator; and

(c) Directions and encouragement for potential bidders to contact the Independent Evaluator with any questions, comments, information or suggestions.

(7) General Requirements. The Solicitation Process must:

(a) Satisfy all applicable requirements of the Act and Commission rules and be fair, reasonable and in the public interest;

(b) Clearly describe the nature and all relevant attributes of the requested resources;

(c) Include clear descriptions of the amounts and types of resources requested, the required timing of deliveries, acceptable places of delivery, pricing options, transmission constraints, requirements and costs that are known at the time, scheduling requirements, qualification requirements, bid and selection formats and procedures, price and non-price factors and weights, credit and security requirements and all other information reasonably necessary to facilitate a Solicitation Process in compliance with the Act and Commission rules;

(d) Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the Independent Evaluator;

(e) Ensure that bidders will timely receive the data and information determined by the Soliciting Utility, in consultation with the Independent Evaluator or as directed by the Commission, to be necessary to facilitate a fair and reasonable competitive bidding process and all information reasonably requested by bidders;

(f) Impose credit requirements and other participation and bidding requirements that are non-discriminatory, fair, reasonable, and in the public interest;

(g) Permit a range of commercially reasonable alternatives to satisfy credit and security requirements;

(h) Permit and encourage negotiation with final short-list bidders for the benefit of ratepayers taking into account increased value but also not unreasonably increasing risks to ratepayers;

(i) Provide reasonable protections for confidential information of bidders; subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;

(j) Provide reasonable protections for confidential information of the Soliciting Utility, subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;

(k) Ensure that if any information that may affect the Solicitation Process is to be shared by the Soliciting Utility with any bidder or with the employees or agents of a Soliciting Utility or its affiliates who may be involved in the development or submission of a Benchmark Option used in a Solicitation (Bid Team), excluding confidential, proprietary or competitively sensitive Benchmark- or bid-specific information or negotiations, that the same information is shared with all bidders in the same manner and at the same time.

(8) Process Requirements for Benchmark Option. In a Solicitation Process involving the possibility of a Benchmark Option:

(a) The Evaluation Team, including non-blinded personnel, may not be members of the Bid Team, nor communicate with members of the Bid Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.

(b) The names and titles of each member of the Bid Team, the non-blinded personnel and Evaluation Team shall be provided in writing to the Independent Evaluator.

(c) The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Bid Team. All such communications to or from the Bid Team must be in writing. The Independent Evaluator must participate in all such communications between members of the Bid Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Independent Evaluator must also make available to the bidder about whose bid the Bid Team's technical expertise was sought a written copy of the correspondence between the Evaluation and Bid Teams. Any response to such correspondence from the bidder must be in writing to the Independent Evaluator and must be conveyed to the Evaluation Team. The Independent Evaluator must provide its own or third party verification of the reasonableness of any technical information solicited from the Bid Team or bidder before it may be used in any evaluation.

(d) There shall be no communications regarding blinded bid information, either directly or indirectly, between the non-blinded personnel and other Evaluation Team members until the final shortlist is determined except as authorized herein, which communications shall be done in the presence of the Independent Evaluator. The non-blinded personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the bidders.

(e) The Evaluation Team shall have no direct or indirect contact or communication with any bidder other than through the Independent Evaluator until such time as a final shortlist is selected by the Soliciting Utility.

(f) Each member of the Bid Team and Evaluation Team, including non-blinded personnel, shall promptly execute a commitment and acknowledgment that he or she agrees to abide by all of the restrictions and conditions contained in these Commission rules. These acknowledgments shall be filed with the Commission within 10 days of their execution.

(g) Should any bidder or a member of the Bid Team attempt to contact a member of the Evaluation Team, such bidder or member of the Bid Team shall be directed to the Independent Evaluator for all information and such communication shall be reported to the Independent Evaluator by the Evaluation Team within seven business days.

(h) All relevant costs and characteristics of the Benchmark Option must be audited and validated by the Independent Evaluator prior to receiving any of the bids and are not subject to change during the Solicitation except as provided herein.

(i) All bids must be considered and evaluated against the Benchmark Option on a fair and comparable basis.

(j) Environmental risks and weight factors must be applied consistently and comparably to all bid responses and the Benchmark Option.

(k) The Solicitation must allow power purchase contract terms equivalent to the projected facility life of the Benchmark Option. The Commission may waive this requirement during review of the draft Solicitation and Solicitation Process for good cause shown.

(l) If the Soliciting Utility is subject to regulation in more than one state concerning the acquisition, construction, or cost recovery of a significant energy resource, the Soliciting Utility shall explain the degree to which it has taken into account the likelihood of resource approval and cost recovery in other jurisdictions in exercising its judgment in selecting the Benchmark Option.

(9) Issuance of A Solicitation.

(a) The Soliciting Utility shall issue the approved Solicitation promptly after Commission approval of the Solicitation and Solicitation Process.

(b) Bidders shall be directed to submit bids directly to the Independent Evaluator in accordance with the schedule contained in the Solicitation.

(c) The Soliciting Utility shall hold a pre-Bid conference in Utah, with both in-person and conference call participation available, at least 30 days before the deadline for submitting responsive bids.

(10) Evaluation of Bids.

(a) The Independent Evaluator shall "blind" all bids and supply blinded bids to the Soliciting Utility and make blinded bids available to the Division of Public Utilities subject to the provisions of an appropriate Commission-issued protective order.

(b) The Independent Evaluator shall supply such information regarding bidders and bids to non-blinded personnel as is necessary to enable such personnel to complete required credit and legal evaluations.

(c) The Soliciting Utility must cooperate fully with the Independent Evaluator.

(d) Subject to an appropriate confidentiality agreement approved by the Commission, the Soliciting Utility shall timely provide to the Independent Evaluator and the Division of Public Utilities full access to all relevant personnel of the Soliciting Utility, together with all data, materials, models and other information, including confidential information and forward pricing curves, used or to be used in developing the proposed Solicitation, preparing the Benchmark Option, or screening, evaluating or selecting bids.

(e) The Soliciting Utility, monitored by the Independent Evaluator, shall conduct a thorough evaluation of all bids in a manner consistent with the Act, Commission Rules and the Solicitation.

(f) The Independent Evaluator shall pursue a reasonable combination of auditing the Soliciting Utility's evaluation and conducting its own independent evaluation, in consultation with the Division of Public Utilities, such that the Independent Evaluator can fulfill its duties and obligations as set forth in the Act and in Commission Rules.

(g) The Soliciting Utility, the Division of Public Utilities and the Independent Evaluator may request further information from any bidder. Any communications with bidders in this regard shall be conducted only through the Independent Evaluator. The Soliciting Utility shall be informed in a timely manner of the content of any communications between the Independent Evaluator and a bidder, but communications shall be conducted on a confidential or blinded basis.

(h) In order to facilitate both an independent evaluation

function and an auditing function, the Independent Evaluator shall have access to all information and resources utilized by the Soliciting Utility in conducting its analyses. The Soliciting Utility shall provide the Independent Evaluator with complete and open access to all documents, information, data and models utilized by the Soliciting Utility in its analyses. The Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the Soliciting Utility's evaluation process in the manner it deems appropriate so that the Soliciting Utility's evaluation process is transparent to the Independent Evaluator. The Soliciting Utility shall have an affirmative responsibility to respond promptly and fully to any request for reasonable access or information made by the Division of Public Utilities or the Independent Evaluator. To the extent the Independent Evaluator determines through its audit or independent evaluation that its evaluation and the Soliciting Utility's yield different results, the Independent Evaluator shall notify the Soliciting Utility and the Division of Public Utilities and attempt to identify reasons for the differences as early as practicable. Where practicable, the Soliciting Utility, the Division of Public Utilities and the Independent Evaluator shall attempt to reconcile such differences. If the differences cannot be reconciled to the Independent Evaluator's satisfaction, the Independent Evaluator will promptly notify the Commission.

(i) The Independent Evaluator shall be responsible for unblinding all bids included on the final short-list and providing relevant contact information to the Soliciting Utility for final negotiations with these short-listed bidders. The Independent Evaluator shall monitor any negotiations with short-listed bidders.

(j) The Division of Public Utilities and the Independent Evaluator may, through the Independent Evaluator, ask the PacifiCorp Transmission group to conduct reasonable and necessary transmission analyses concerning bids received. Any such analyses shall be provided to the Division of Public Utilities, the Independent Evaluator and the Soliciting Utility. The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any reasonable amounts paid by the Soliciting Utility for those analyses.

R746-420-4. Qualifications of Independent Evaluator.

(1) An Independent Evaluator must:

(a) Demonstrate qualifications, expertise and experience to perform all of the functions of the Independent Evaluator as contemplated by the Act and Commission rules;

(b) Demonstrate independence from the Soliciting Utility and potential bidders identified by the utility or determined by the Commission;

(c) Be experienced and competent to facilitate necessary communications, including operation and control of a website for all purposes contemplated by Commission rules;

(d) Provide statements of interest to the Commission which disclose:

(i) any contracts or other economic arrangements of any kind between the Soliciting Utility or likely bidders and the Independent Evaluator or any affiliates that currently exist, that have existed within the past ten years, or that have been promised or are expected in the future; and

(ii) memberships in trade organizations; and

(e) File with the Commission a full copy of any agreement of any type between the Independent Evaluator and the Soliciting Utility or any likely bidder or any affiliates.

(2) While performing services related to the Solicitation, the Independent Evaluator shall not accept employment from nor communicate with bidders and the Soliciting Utility regarding future employment or contract opportunities.

R746-420-5. Payments to Independent Evaluator.

(1) Payments to the Independent Evaluator selected by the Commission shall be paid by the Soliciting Utility in accordance with terms and conditions specified by the Commission.

(a) The Commission and the Independent Evaluator shall execute a contract approved by the Commission with such terms and conditions as the Commission may approve.

(b) Invoices for the Independent Evaluator's services shall be sent as directed by contract.

(c) After an invoice is reviewed and approved, it will be forwarded to the Soliciting Utility for payment to the Independent Evaluator.

(d) Unless the Commission directs otherwise in connection with a Solicitation, the expenses of the Independent Evaluator shall be reimbursed as follows:

(i) The Soliciting Utility is authorized to collect bid fees that are reasonable under the circumstances of up to $10,000 per bid to defray costs of the Independent Evaluator; and

(ii) The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any additional amounts paid by the Soliciting Utility for the Independent Evaluator.

R746-420-6. Functions of Independent Evaluator.

(1) The Independent Evaluator shall perform all functions contemplated by the Act or Commission rules, in coordination with and under the contract with the Commission.

(2) The functions of the Independent Evaluator shall include the following:

(a) Facilitate and monitor communications between the Soliciting Utility and bidders;

(b) Review and validate the assumptions and calculations of any Benchmark Option;

(c) Analyze the Benchmark Option for reasonableness and consistency with the Solicitation Process;

(d) Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of bids;

(e) Receive and "blind" bid responses;

(f) Provide input to the Soliciting Utility on:

(i) the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating bids;

(ii) the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility's most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option;

(iii) whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;

(iv) whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;

(v) negotiation of proposed contracts with successful bidders; and

(vi) other matters as appropriate in performing the duties of the Independent Evaluator under the Act and Commission rules, or as directed by the Commission;

(g) Ensure that all bids are treated in a fair and non-discriminatory manner;

(h) Monitor, observe, validate and offer feedback to the Soliciting Utility, the Commission, and the Division of Public Utilties on all aspects of the Solicitation and Solicitation

Process, including:

(i) content of the Solicitation;

(ii) evaluation and ranking of bid responses;

(iii) creation of a short list(s) of bidders for more detailed analysis and negotiation;

(iv) post-Bid discussions and negotiations with, and evaluations of, short list bidders; and

(v) negotiation of proposed contracts with successful bidders;

(i) Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of bid responses;

(j) Solicit additional information on bids necessary for screening and evaluation purposes;

(k) Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process;

(l) Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or bidders, and present recommendations for resolution of unresolved disputes to the Commission;

(m) Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a Significant Energy Resource Decision;

(n) Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility;

(o) Perform such other evaluations and tasks as the Commission may direct;

(p) At the request of the Commission and subject to the existence or negotiation of appropriate contractual arrangements, participate in the evaluation of a request for an Order to Proceed under Section 54-17-304 and testify at any Commission hearings regarding the same; and

(q) No part or provision of this rule shall prevent or preclude the Commission from removing or dispensing with any function, responsibility, service or task of the Independent Evaluator in a particular case or proceeding as the Commission may determine is appropriate in the circumstances of such case or proceeding.

(3) Communications

(a) Communications between a Soliciting Utility and potential or actual bidders shall be conducted only through or in the presence of the Independent Evaluator. Bidder questions and Soliciting Utility or Independent Evaluator responses shall be posted on an appropriate website. The Independent Evaluator shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

(b) The Soliciting Utility may not communicate with any bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a bidder to the Solicitation, except through or in the presence of the Independent Evaluator.

(c) The Soliciting Utility shall provide timely and accurate responses to any request from the Independent Evaluator, including requests from bidders submitted by the Independent Evaluator, for information regarding any aspect of the Solicitation or the Solicitation Process.

(4) Reports

(a) The Independent Evaluator shall prepare at least the following confidential reports and provide them to the Commission, the Division of Public Utilities and the Soliciting Utility:

(i) Monthly progress reports on all aspects of the Solicitation Process as it progresses;

(ii) Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(iii) Other reports the Independent Evaluator deems appropriate; and

(iv) Other reports as the Commission may direct.

(b) The Independent Evaluator shall prepare at least the following public reports and provide them to the Commission and all Interested Parties:

(i) Final report, without confidential information, analyzing the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(ii) Comments and recommendations with respect to changes or improvements for a future Solicitation Process; and

(iii) Other reports as the Commission may direct.

(c) Upon advance notice to the Soliciting Utility, the Independent Evaluator may conduct meetings with intervenors during the Solicitation Process to the extent determined by the Independent Evaluator or as directed by the Commission.

(d) If at any time the Independent Evaluator becomes aware of any violation of any requirements of the Solicitation Process or Commission rules, the Independent Evaluator shall immediately notify the Soliciting Utility and the Commission. The Independent Evaluator shall report any actions taken by the Soliciting Utility and any other recommended remedies to the Commission.

(e) The Independent Evaluator shall document all substantive correspondence and communications with the Soliciting Utility and bidders, shall make such documentation available to parties in any relevant proceedings upon proper request and subject to the terms of a protective order if the request contains or pertains to confidential information. Within six months after the end of the Solicitation Process, the Independent Evaluator shall provide a copy of this documentation to the Soliciting Utility. The Soliciting Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests. The Soliciting Utility shall retain such documentation for a period of at least 10 years. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

KEY: significant energy resource, solicitation process, order to proceed, filing requirements
August 28, 2007 **54-17-100 et seq.**

R746. Public Service Commission, Administration.
R746-430. Procedural and Informational Requirements for Action Plans, for an Approval of a Significant Energy Resource, for Determination of Whether to Proceed, and for Waivers of a Solicitation Process or of an Approval of a Significant Energy Resource.
R746-430-1. Definition and Filing of Action Plan.

Definition: "Action Plan" means a plan, prepared or updated in anticipation of the acquisition of the Affected Utility's significant energy resource(s) under the Energy Resource Procurement Act, Utah Code Title 54 Chapter 17, outlining actions and specific resource decisions intended to implement an Affected Utility's Integrated Resource Plan consistent with the utility's strategic business plan.

(1) Filing of an Action Plan- As soon as practicable after development of its Integrated Resource Plan or as part of the development of an Integrated Resource Plan, each Affected Utility shall file with the Commission an Action Plan. The Affected Utility shall include with the Action Plan the following:

(a) Information showing the Affected Utility's analysis and conclusions by which it identified and selected the actions and significant energy resources which will be pursued through the Action Plan consistent with the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17;

(b) Identification of the Integrated Resource Plan used in the development of the Action Plan, including information showing how the Action Plan is consistent with the Integrated Resource Plan or why deviations have been made;

(c) Identification of all data, models and information used to develop the Action Plan, including, but not limited to, the Affected Utility's costs, risk and scenario analysis, methodologies and assumptions used to develop the Action Plan; and

(d) Identification of the means, whether included or not included in the Action Plan, by which the Affected Utility may enable changes to the actions and significant energy resource(s) pursued through the Action Plan, which changes may be warranted as the Affected Utility prepares and pursues future Integrated Resource Plans or may revise actions and significant energy resources in future Action Plans.

(2) Procedure on an Action Plan- Upon the filing of an Action Plan:

(a) The Commission shall set and give notice of a scheduling conference to set a schedule which will identify the time period during which interested parties may obtain information to prepare comments on the Action Plan, set the date upon which comments shall be provided to the Commission and other interested parties, and set a date upon which reply comments may be made to the comments previously filed.

(b) The Commission may, but is not required to, hold hearings in connection with the Action Plan for the purpose of the Commission's review and guidance.

(3) Affect of Review or Guidance - Nothing in these rules requires any acknowledgment, acceptance or order pertaining to the Action Plan submitted. Any review or guidance provided by the Commission shall not be binding on the Affected Utility and shall not be construed as approval of any action or resource identified in the Action Plan. The Affected Utility's response to any Commission review or guidance may be considered by the Commission in connection with any other request or filing made by the Affected Utility under the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17.

R746-430-2. Approval of a Significant Energy Resource.

(1) Filing Requirements- When an Affected Utility files a request to approve a Significant Energy Resource pursuant to Section 54-17-302, the utility shall include with its request the following:

(a) Information to demonstrate the utility has complied with the requirements of the Energy Resource Procurement Act and Commission rules;

(b) Information to demonstrate whether approval of the selected Significant Energy Resource is in the public interest;

(c) Information regarding the solicitation process, if the Significant Energy Resource was solicited through a solicitation process, including, but not limited to:

(i) Summaries of all bids received;

(ii) Summaries of the Affected Utility's rankings and evaluations of bids;

(iii) Copies of all reports relating to the solicitation process made by an independent evaluator who may have been involved with the solicitation process;

(iv) A copy of the complete Commission approved Solicitation with appendices, attachments and drafts, if applicable; and

(v) A signed acknowledgment from a utility officer involved in the solicitation that to the best of his or her knowledge, the utility fully observed and complied with the requirements of the Commission's rules or statutes applicable to the solicitation process;

(d) Identification of all information, data, models and analyses used by the Affected Utility to evaluate the acquisition of the Significant Energy Resource if the acquisition is pursuant to Section 54-17-201(3), or to evaluate and rank bids and the selected resource, if the acquisition is by a solicitation process pursuant to Section 54-17-201(2);

(e) Contracts proposed for execution or use in connection with the acquisition of the Significant Energy Resource and identification of matters for which contracts are being negotiated or remain to be negotiated;

(f) Information on the estimated costs for the Significant Energy Resource, including but not limited to engineering studies, data, and models used in the analysis, and any other costs which the utility considers recoverable pursuant to Section 54-17-303;

(g) An analysis of the estimated effects the Significant Energy Resource will have on the Affected Utility's revenue requirement;

(h) Financial information demonstrating adequate financial capability to obtain the Significant Energy Resource pursuant to the proposed acquisition;

(i) Identification of all other relevant information in support of the requested approval; and

(j) If the Commission has not previously issued a Protective Order in the approval request proceeding, a Proposed Protective Order, using the Commission's standard Protective Order, which may be used to facilitate access to information which may be claimed as confidential or protected.

(2) Procedure to Approve a Significant Energy Resource and Its Acquisition.

(a) If the Affected Utility is contemplating acquiring a Significant Energy Resource through a solicitation process, after it has completed its evaluation of bids but prior to filing a request to approve a Significant Energy Resource, the utility shall provide a written notification to the Commission of the Significant Energy Resources it has selected from the bids and the reasoning for the utility's selection of those resources.

(b) The Affected Utility may negotiate a proposed final agreement for the acquisition of the proposed Significant Energy Resource at any time, however, any such agreement shall be expressly conditional on the final decision of the Commission in the approval proceeding.

(c) The Affected Utility shall file a request for approval of a Significant Energy Resource as soon as practicable after completion of the utility's decision to select the resource.

(i) Prior to filing the request for approval of a Significant Energy Resource, the Affected Utility shall provide public

notice of its intent to file the request and seek approval of the Significant Energy Resource from the Commission.

(ii) After the filing of the request, the Commission will schedule and provide notice of a Scheduling Conference to set a schedule for the proceedings, including a public hearing, through which it will consider the requested approval of the Significant Energy Resource.

(d) Any agreement for the acquisition of a Significant Energy Resource shall be submitted to the Commission for approval. The Commission will set a schedule to accept comments and reply comments from interested persons and the Affected Utility concerning whether the agreement complies with any Commission orders or Commission conditions relating to the Significant Energy Resource which will be acquired through the agreement.

(e) The Affected Utility shall maintain a complete record of analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and the Independent Evaluator and all materials submitted in response to discovery requests during any proceedings to approve a Significant Energy Resource and its acquisition for at least ten years after the date of a Commission order approving an agreement to acquire the Significant Energy Resource. A party to a proceeding may petition the Commission to require specified additional material to be maintained for a specified time.

R746-430-3. Requests for a Determination of Whether to Proceed with an Approved Significant Energy Resource In the Event of Change in Circumstances or Costs.

(1) Filing of a Request- When an Affected Utility seeks a Commission review and determination, pursuant to Section 54-17-304, of whether it should proceed with an approved Significant Energy Resource decision, the utility shall file with its request the following:

(a) Information concerning the nature and cause of the change of circumstances or projected costs, including, but not limited to, when and how the Affected Utility became aware of the change of circumstances or projected costs and any actions it has taken;

(b) Information concerning all costs incurred by the utility or to be incurred by the utility if the Commission determines that the utility should not proceed with the approved Significant Energy Resource, including those for which the utility anticipates it will seek future recovery pursuant to Section 54-17-304(4);

(c) Information concerning the utility's expectations concerning costs, timing and other aspects of an Approved Energy Resource if the utility were to proceed with its acquisition with the changed circumstances or projected costs. This information shall also include proposed contracts or contract amendments, if any, to be used in the event the utility were to proceed with the Significant Energy Resource;

(d) The utility's conclusions and recommendations on whether it would or would not be in the public interest to proceed with the Approved Energy Resource, and identification of all information, data, models and analyses used in arriving at the utility's conclusions and recommendations;

(e) Information concerning any alternatives which the utility considered to meet the needs or purposes for which the Approved Energy Resource is intended in the utility's own analysis of whether or not to proceed with the Approved Energy Resource, including, but not limited to, identification of all data, models, and analyses used by the utility; and

(f) If the Commission has not previously issued a Protective Order in the approval request proceeding, a Proposed Protective Order, using the Commission's standard Protective Order, which may be used to facilitate access to information which may be claimed as confidential or protected.

(2) Procedure on a Request for a Commission Review and Determination on Whether to Proceed.

(a) The Affected Utility shall give notice of the filing of its request to all parties who participated in the Commission proceedings by which the Significant Energy Resource was approved, individuals who have requested notification of such requests, and, additionally, as directed by the Commission.

(b) The Commission shall set and give notice of a scheduling conference by which it will set a schedule which will identify the time period, if any, during which interested persons may obtain information to prepare comments on the request, set the date upon which comments shall be provided to the Commission and other interested persons, and set a date upon which reply comments may be made to the comments previously filed. The Commission may, but is not required to, set a date for a public hearing on the request.

(c) The Affected Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all material submitted in response to discovery for a period of ten years from the date the Commission issues an order on its request. A party to a proceeding may petition the Commission to require specified additional information to be maintained for a specified time.

R746-430-4. Requests for Waiver of a Solicitation Process for a Significant Energy Resource or Waiver of Approval of a Significant Energy Resource.

(1) Filing requirements -- An Affected Electrical Utility filing for a waiver pursuant to Section 54-17-501 shall file a request for waiver which shall fulfill the requirements of Section 54-7-501 and which shall include testimony and exhibits which provide:

(a) An explanation of and the factual basis for the emergency, opportunity or other factors that support the requested waiver;

(b) If the requested waiver is based upon an emergency, evidence establishing the nature and cause of the emergency and an explanation of why the proposed waiver is in the public interest;

(c) If the requested waiver is based upon a time-limited commercial or technical opportunity, evidence establishing the nature of the opportunity and an explanation of why the proposed waiver is in the public interest;

(d) If the requested waiver is based upon other factors, evidence establishing the nature of those factors and an explanation of why the proposed waiver is in the public interest;

(e) Evidence explaining and demonstrating when the utility first became aware of the claimed emergency, opportunity or other factors and how and when it pursued or responded to the same;

(f) If the requested waiver is for a waiver of a solicitation process, evidence

(i) that the particular resource to be procured is consistent with the utility's current Integrated Resource Plan,

(ii) that the particular resource to be procured is consistent with any pending solicitation process(es) and what affect procurement of the particular resource will have on any pending solicitation process(es),

(iii) regarding how the particular resource to be procured compares in value to similar resources,

(iv) on how the particular resource will be connected to and will be integrated with the utility's system,

(v) of the costs which the utility anticipates it will recover from ratepayers, which shall include, but is not limited to, analysis of the affects upon the utility's power costs and revenue requirements, and

(vi) of any affect the proposed resource will have on future resource acquisitions;

(g) All information, data, models and analyses used by the utility to evaluate the proposed resource and associated waiver request; and

(h) Evidence showing that a requested waiver is in the public interest.

(2) The time periods for an act or proceeding process contained in Section 54-17-501 shall supercede any differing time periods for an act or proceeding process contained in any other Commission rule.

(3) A Commission order granting a waiver of a Solicitation Process or an Approval of an Energy Resource Decision shall not constitute and does not determine approval or disapproval of a significant energy resource decision including cost recovery.

(4) Pursuant to Section 54-17-501(7), the Commission may condition the granting of a waiver on such conditions as the Commission may determine to be just, reasonable and in the public interest.

KEY: action plan, significant energy resource, order to proceed, utilities
August 28, 2007 54-17-100 et seq.

R765. Regents (Board of), Administration.
R765-607. Utah Higher Education Tuition Assistance Program.
R765-607-1. Purpose.

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Higher Education Tuition Assistance Program("UTAP," or "program").

R765-607-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 7, Part 5 (Utah Higher Education Tuition Assistance Program).

2.2. State Board of Regents Policy R601, Board of Directors of the Utah Higher Education Assistance Authority.

2.3. Utah Code Title 53B, Chapter 8-102, Definition of Resident Student.

2.4. Utah Code Title 53B, Chapter 8-106, Resident Tuition - Requirements - Rules.

2.5. State Board of Regents Policy R512, Determination of Resident Status.

R765-607-3. Effective Date.

These policies and procedures are effective June 21, 2007.

R765-607-4. Policy.

4.1. Program Description - UTAP is a need-based grant program to provide need-based grants at the community colleges and at centers of the Utah State University. The Program recognizes "that tuition and general fee costs to students at Utah community colleges and established branch campuses and centers represent significant challenges for many of the students they serve". Program funds may be used only for need-based grants to students attending higher education institutions as provided herein.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority to govern UTAP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Institutions Eligible to Participate - Eligible institutions include Snow College, Dixie State College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and Utah State University on behalf of its off-campus centers.

4.4. Students Eligible to Receive UTAP Grants - To be eligible to receive a need-based grant funded by UTAP, a student must:

4.4.1. Be a resident student of the State Of Utah under Utah Code Section 53B-8-1-2 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in a degree, diploma, or certificate program at the community college entity (specific campus or extension of the specific campus) for which the UTAP grant fund is established, or at a branch campus or center of Utah State University for receipt of a grant from the University's UTAP grant fund.

4.4.3. Be in the first term of the student's enrollment at the institution or be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs.

4.5. Initial Allocation of Appropriated Funds - Money appropriated to the program for a specific fiscal year, plus any remaining balance at the end of the preceding fiscal year, shall be allocated to eligible institutions as follows:

4.5.1. Fifty percent of the amount available for allocation each fiscal year shall be allocated in equal proportions to:

4.5.1.1. Snow College, for its main campus and extensions;

4.5.1.2. Dixie State College, for its main campus and extensions;

4.5.1.3. College of Eastern Utah, for its main campus and extensions of the main campus;

4.5.1.4. College of Eastern Utah, for its San Juan Campus and extensions of the San Juan Campus;

4.5.1.5. Utah Valley State College, for its main campus and extensions;

4.5.1.6. Salt Lake Community College, for its Taylorsville Campus and extensions of the Taylorsville Campus; and

4.5.1.7. Salt Lake Community College, for its South City Campus and extensions of the South City Campus.

4.5.2. Fifty percent of the amount available for allocation each fiscal year shall be allocated to the Utah State University for its instructional centers at Roosevelt, Blanding, Randolph, Price, Moab, Brigham City, Tooele, Richfield, and Ephraim, and such other centers as UHEAA may determine.

4.5.3. Individual Award Limits -- The total amount of any UTAP grant award to an eligible student in an award year will not exceed $2,500, and the minimum UTAP grant award to an eligible student will be $250, except that:

4.5.3.1. The minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UTAP grant award for the year; and

4.5.3.2. An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s), or other defined term for which the student is enrolled.

4.6. Institution Participation Agreement -- Participating institutions shall provide a statement that the institution agrees to maintain appropriate financial records, and records regarding the determination of grant awards to qualifying students, and to make such records available upon request for review by UHEAA or State Board of Regents officers or auditors for a period of three years after the applicable transaction dates.

4.6.1. Program Rosters -- Each eligible institution shall, at the conclusion of the awarding cycle, no later than 30 days after the end of the fiscal year, provide UHEAA with a roster of the eligible students who received funds.

4.7. Three Years to Use Allocations -- An eligible institution which receives funds in a fiscal year shall have that fiscal year and the two following fiscal years to award the funds to eligible students. If, by the end of the three-year period, the funds from the first fiscal year have not been awarded to eligible students, the funds shall be returned to the pool of program money available for allocation for the following fiscal year.

4.8. Investment of Program Funds - Funds appropriated

for the program shall be invested by UHEAA with the State Treasurer's Public Treasurer Investment Fund, and interest earned prior to disbursement for qualifying proposals shall be retained in the program fund and added to the pool available for allocation in the following fiscal year.

4.9. Disbursement of Funds - UHEAA shall promptly disburse the allocated funds to the institution as soon after July 1 of each Fiscal Year as the funds become available for disbursement.

KEY: financial aid, higher education
August 22, 2007 53B-7-501
Notice of Continuation July 3, 2003 53B-7-502

R850. School and Institutional Trust Lands, Administration.
R850-100. Trust Land Management Planning.
R850-100-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-201(3) which require that planning procedures be developed for trust lands, and for the opportunity for the public to participate in the planning process.

R850-100-200. Simultaneous Use of Trust Land Assets.

The agency shall encourage the simultaneous use of compatible, revenue generating activities on trust lands.

R850-100-300. Joint Planning.

The agency may participate in joint planning with other land management agencies when the director determines that the commitment of agency resources is justified.

R850-100-400. Assessments of Natural and Cultural Resources.

1. The Resource Development Coordinating Committee (RDCC) process provides a natural resource assessment for purposes of trust land management. No other natural resource analysis is required beyond consultation with the RDCC. The public may comment on proposed trust land uses through the RDCC process.

2. Cultural resource analysis on specific actions shall be conducted pursuant to R850-60.

KEY: management, natural resource assessment, land use
July 16, 2002 53C-1-302(1)(a)(ii)
Notice of Continuation August 15, 2007 53C-2-201(3)

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt.

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.

1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;

2. of a change of character of the business, or

3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;

2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

B. If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

C. If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

D. Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2.a) Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3.a) Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

E. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales

made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1) The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible

personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(7) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate

commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property

to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of

antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor and Repair Under an Extended Warranty Agreement Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

(a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

(b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

(2) Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-

12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

(4) If a sale by a printer consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

(6) If a purchase consists of items that are exempt from

sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a $50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission

signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;

2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) repair telephone equipment that retains its character as tangible personal property.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;

3. telephone answering services received or relayed by a human operator;

4. charges to repair subscriber equipment that is regarded as real property;

5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;

6. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and

7. charges for one-way pager services.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

A. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

B. The sale, rental or lease of prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

A. Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill and which are required to be paid, unless the total amount of the gratuity or tip is passed on to the waiter or waitress who served the customer. Tax on the required gratuity is due from private clubs, even though the club is not open to the public. Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

B. Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or

similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28).

A. No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of such payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and

2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;

2. the volume of taxable energy delivered to the user; and

3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and

2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.

A. A qualified emergency food agency may apply to the Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.

B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.

D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.

R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.

The amount of purchases or uses exempt under Sections 59-12-104(14) and 59-12-104(51) shall be reported to the commission by the person that purchases the items exempt from sales or use tax under those subsections.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

1. Except as provided in E., a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

B. Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

C. The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

1. For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with A.

2. For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with B.

D. A veterinarian is not required to collect sales and use tax on:

1. medical services;
2. boarding services; or
3. grooming services required in connection with a medical procedure.

E. Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

1. the sales are exempt from sales and use tax under Section 59-12-104; and

2. the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

F. If a sale by a veterinarian consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

A. Graphic design services are not subject to sales and use tax:

1. if the graphic design is the object of the transaction; and

2. even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

B. Except as provided in C., if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

1. there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

2. the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

C. A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

D. A vendor that provides nontaxable graphic design services and taxable tangible personal property under C. must separately state the nontaxable graphic design services or the entire sale is subject to sales and use tax.

R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, Aircraft, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Except as provided in Subsections (3) and (4), the provisions of this rule apply to the imposition of sales and use tax under Section 59-12-103 on amounts paid or charged as

admission or user fees by jeep, snowmobile, aircraft and boat tour operators, river runners, outfitters, and other sellers providing similar services.

(3) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (3) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(4) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

(5) If payment for a service provided by a seller described in (2) occurs in Utah and the service originates or terminates in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

(6) If payment for a service provided by a seller described in (2) occurs outside Utah and the entire service occurs in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

(7) If payment for a service provided by a seller described in (2) occurs outside Utah and the service originates or terminates outside Utah, the seller is not required to collect Utah sales and use tax on the transaction.

(8) Payment occurs in Utah if the purchaser:

(a) while at a business location of the seller in the state, presents payment to the seller; or

(b) does not meet the criteria under (8)(a) and is billed for the service at an address within the state.

(9) For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in (2) occurs in Utah.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:
1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;
14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;
17. hats and caps;
18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:
1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:
a) knitting needles;
b) patterns;
c) pins;
d) scissors;
e) sewing machines;
f) sewing needles;
g) tape measures; and
h) thimbles; and
5. sewing materials that become part of clothing, including:
a) buttons;
b) fabric;
c) lace;
d) thread;
e) yarn; and
f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:
A. breathing masks;
B. clean room apparel and equipment;
C. ear and hearing protectors;
D. face shields;
E. hard hats;
F. helmets;
G. paint or dust respirators;
H. protective gloves;
I. safety glasses and goggles;
J. safety belts;
K. tool belts; and
L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:
A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
H. roller skates and ice skates;
I. shin guards;
J. shoulder pads;
K. ski boots;
L. waders; and
M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:

1. carried to the third place; and

2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:

1. item basis; or

2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and

2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and

2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-119. Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The provisions of this rule apply to a seller that:

1. is not a restaurant; and

2. provides a purchaser both food and lodging.

B. If a seller does not separately state an amount for tax applicable to food on the invoice, the seller must:

1. pay sales and use tax on the food at the time the seller purchases the food; and

2. include the food in the base that is subject to transient room tax.

C. Subject to D., if a seller separately states an amount for tax applicable to food on the invoice, the seller:

1. may purchase the food tax exempt from sales and use tax as a sale for resale; and

2. may not include the food in the base that is subject to transient room tax.

D. A seller that separately states an amount for tax applicable to food on the invoice must ensure that those amounts are accurately reflected in the seller's records.

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

(a) land;

(b) buildings;

(c) raw materials;

(d) supplies;

(e) film;

(f) services;

(g) transportation;

(h) gas, electricity, and other fuels;

(i) admissions or user fees; and

(j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

(a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and

(b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

KEY: charities, tax exemptions, religious activities, sales tax

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10-1-303

10-1-306

10-1-307

10-1-405

19-6-808

26-32a-101 through 26-32a-113

59-1-210

59-12

59-12-102

59-12-103

59-12-104

59-12-105

59-12-106

59-12-107

59-12-108

59-12-118

59-12-301

59-12-352

59-12-353

R918. Transportation, Operations, Maintenance.
R918-3. Snow Removal.
R918-3-1. On State Roads.

A. The Utah Department of Transportation will provide snow removal services on the following functional classes of state roads:

1. Interstate highways
2. Principal arterials
3. Minor arterials
4. Collector roads which meet the following criteria:

a. where counties or cities provide year round fire, police and emergency services;

b. where mail year round delivery is provided;

c. where year round water and sanitary services are provided; and

d. where counties or cities request or concur with year round snow removal.

B. The following state road sections are an exception to paragraph A above and shall be closed in the fall when snow depth requires closure, and will not be reopened until spring weather conditions permit.

TABLE

SR-35 (Wolf Creek Pass)	MP 12.0 - 32.0
SR-39 (Monte Cristo)	MP 37.2 - 60.3
SR-65 (Region 2 East Canyon)	MP 3.1 - 8.4
SR-65 (Region 1)	MP 8.4 to 13.4
SR-92 (Alpine Loop)	MP 14.4 to 22.3
SR-148 (Cedar Canyon)	MP 0.2 to 3.5
SR-150 (Mirror Lake)	MP 14.7 to 48.6
SR-153 (Puffer Lake)	MP 21.5 - 39.6
SR-190 (Guardsman Pass)	MP 18.1 to 21
SR-224 (Wasatch County line to Deer Valley	MP 10 to 12.1

C. Other state road sections may be closed for the winter/or not receive snow removal services, if the Region/District office determines that it is not cost effective to provide snow removal services.

D. The removal of the normal snowfall and windrows on private road approaches, both on and off the highway right-of-way, is a responsibility of the property owner. When clearing these approaches, the property owner shall not push or pile the snow onto the state right-of-way. Within towns and where curb and gutter exist, the normal parking area off the travel lane may be used for snow storage by state forces. If it is desired to remove this snow, it shall be the responsibility of the city, county or the adjacent property owner. The state shall not haul snow off the roadway except on structures where the length of structures makes removal of the snow by other means impracticable.

R918-3-2. On State Roads Leading to Winter Recreational Areas.

A. State roads leading to winter recreational areas not qualifying above may qualify for snow removal services upon consideration of developed analytical criteria as listed below. These criteria establish a procedure to equally evaluate all winter recreational areas throughout the State. Each winter recreational area will be evaluated individually on the basis of a benefit cost ratio and the resort facilities provided by the operator and/or their entrepreneurs.

B. To receive weekend and holiday snow removal services, a winter recreational area shall meet a benefit cost ratio of 50 or greater as defined below, provide adequate parking area as defined below, and provide emergency accommodations. To receive weekday services, in addition to the above requirements the area must provide two of the following:

1. lift capacity of 700,000 vertical transport feet/hour;
2. on-site lodging facilities;
3. on-site eating accommodations;
4. gasoline, towing and automotive services.

C. The benefit cost ratio - as used herein, is the quotient obtained by dividing the amount of money spent by recreational area users by the cost of providing snow removal operations on access roads. To qualify for snow removal services the benefit cost ratio "K" as determined by the following formula shall be 50 or greater:

K = NU / 7C

N = Number of days of operation per week

ADT = Average daily traffic

U = (Average occupancy rate for each vehicle)

x (ADT for the road during the skiing season)

x (Length of season in days) x (Average amount spent at resorts by skiers per day)

C = Average daily cost of providing snow removal services

The number "7" is the number of days in a week

D. Parking Facilities: The resort operator is to provide and plow a minimum of 200 square feet of parking area (off of state right-of-way) for each unit of average daily traffic used in computing "K" in paragraph C., regardless of the number of operating days per week, "N". The state will plow state access roads but not open them until the winter recreational area operator has plowed the parking area to the required square footage and opened any access roads off the state highway system. Whenever the parking area is not satisfactorily plowed, the state will close the state access roads to inbound traffic except emergency vehicles.

E. Emergency Accommodations. The recreational area operator is to provide lodging and meal accommodations for emergencies.

F. Resort Facilities - To receive snow removal services each resort must have certain capabilities:

Capacity and Services: Snow removal based on benefit cost ratio will be limited to weekends and holidays. To receive weekday services the winter recreational resort operator must provide or have available for other concessionaires at least two of the following at the resort site:

1. lift capacity of 700,000 vertical transport feet/hour;
2. on-site lodging accommodations for 5% of (average daily traffic for the road during the skiing season), x (average occupancy rate for each vehicle);
3. on site eating accommodations for 10% of (average daily traffic for the road during the skiing season), x (average occupancy rate for each vehicle);
4. gasoline, towing and automotive services.

R918-3-3. Other Than Roadways on the State System.

A. Snow removal service will not be provided for the following, except where provided through written agreement with the Utah Department of Transportation:

1. sidewalks;
2. overhead crosswalk structures;
3. walkways attached to structures;
4. driveways;
5. parking lots;
6. roads not on the state system;
7. overhead vehicular structures not on the state system; and
8. bike and pedestrian trails.

KEY: snow removal
February 15, 2001 **72-1-201**
Notice of Continuation August 9, 2007 **72-1-205**
72-1-303

R920. Transportation, Operations, Traffic and Safety.
R920-1. Manual of Uniform Traffic Control Devices.
R920-1-1. Adoption by Reference.

Adopted by reference is the Manual of Uniform Traffic Control Devices (MUTCD). This manual was approved by the Federal Highway Administrator as the National standard for all highways open to public travel in accordance with Title 23, U.S. Code, Sections 109(d) and 402(a) and 23 CFT 1204.4.

KEY: traffic control
1987 63-49-8(5)(c)
Notice of Continuation August 13, 2007

R920. Transportation, Operations, Traffic and Safety.
R920-3. Manual of Uniform Traffic Control Devices, Part VI.
R920-3-1. Adoption of Federal Manual.

Manual of Uniform Traffic Control Devices, Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations, 1988 Edition, Revision 3, September 3, 1993 of the Federal Highway Administration is adopted by reference.

KEY: work zone traffic control
1987 72-6-115
Notice of Continuation August 10, 2007

R920. Transportation, Operations, Traffic and Safety.
R920-4. Permit Required for Special Road Use or Event.
R920-4-1. Special Road Use.

UDOT shall promote safe utilization of highways for parades, marathons, and bicycle races. Special Road Use permits shall be required for any use of state routes other than normal traffic movement. Permits may be obtained by fulfilling requirements of DOT form "Special Road Use Permit". Policy applies to all routes under jurisdiction of DOT. Permittee shall hold DOT harmless in event of litigation. A traffic control plan, in accordance with latest edition of the Manual on Uniform Traffic Control Devices and Barricading and Construction Standard Drawings, shall be provided to, and approved by Dept. District Traffic Engineer or Permittee shall restore the particular road segment to its' original condition, free from litter, etc. All applications for permits shall be made a minimum of 15 days prior to the specified activity.

KEY: parades, bicycle, races

1987	**41-6-114**
Notice of Continuation August 10, 2007	**41-22-15**
	41-6-87.9

R920. Transportation, Operations, Traffic and Safety.
R920-5. Manual and Specifications on School Crossing Zones. Supplemental to Part VII of the Manual on Uniform Traffic Control Devices.
R920-5-1. Incorporation by Reference.

In order to implement the federal government's adoption of the Millenium Edition of the Manual on Uniform Traffic Control Devices, the Department adopts by reference the Utah Traffic Controls for School Zones, Part 7 Supplement to the Manual on Uniform Traffic Control Devices, Millenium Edition, (2005 Edition). Copies of this document are available at the Department, Attn: Traffic and Safety, 4501 South 2700 West, Salt Lake City, Utah 84114.

KEY: pedestrians, traffic control, traffic safety, traffic signs
July 18, 2005 41-6-20(2)
Notice of Continuation August 10, 2007

R920. Transportation, Operations, Traffic and Safety.
R920-6. Snow Tire and Chain Requirements.
R920-6-1. Purpose.

The purpose of this rule is to allow the Executive Director of the Utah Department of Transportation to designate travel restrictions on certain state highways located in canyon areas of the State of Utah, that may not be safely traversed by the public or which would tend to create hazard or hamper road maintenance activities of the Utah Department of Transportation, unless the vehicle or motor vehicle traversing said highway is adequately equipped with certain safety devices.

R920-6-2. Authority.

The authority for this rule is in Sections 72-1-201 and 72-3-102; Title 72, Chapter 4, Part 1, Transportation Code, and Section 41-6-21.

R920-6-3. Provisions.

A. Locations shall be requested by the Department's District Director after coordinating with the local Utah Highway Patrol office. The designations by the Executive Director shall be established through a Traffic Engineering Order (TEO) from the Division of Traffic and Safety to the District Director's office wherein the designated highway is located.

B. The Division of Traffic and Safety shall maintain and annually publish a listing of those highways so designated for distribution to:

1. Utah Department of Transportation District Offices;
2. Utah Highway Patrol;
3. county offices;
4. local law enforcement officials.

C. When any designated highway is so restricted, no vehicle or motor vehicle shall be allowed or permitted the use of the highway, during the period between November 1 and March 31, unless:

1. Said vehicle is equipped with either:
a. Steel link chains or have chains in possession; or
b. Mounted snow tires; or
c. Elastomeric tire chains, designed for use with radial tires.

2. Four-wheel drive vehicles must have a minimum of two mounted snow tires to meet the requirements.

3. Radial tires without snow tread do not meet the requirements.

R920-6-4. Responsibilities.

A. Personnel of the Utah Department of Transportation or the Utah Highway Patrol, on location to enforce this resolution, may permit vehicles or motor vehicles not equipped with the traction aids defined in the preceding paragraph to travel a designated state highway if, in the opinion of said personnel, the vehicle or motor vehicle may do so without endangering the public safety or creating a hazard to or interference with, highway maintenance operations.

B. The Utah Department of Transportation requests the Utah Highway Patrol, or designated local law enforcement agency, to enforce this rule.

C. The Utah Department of Transportation will notify the county officials of counties in which highways are so restricted, as outlined above.

D. All authority shall rest with the Transportation Commission to control use of highways where avalanche danger and other threats to the public safety are concerned.

E. The District Director or designee shall work with the Utah Highway Patrol in establishing working criteria for the adequate enforcement of the above provisions.

KEY: tires, snow*
1992 **41-6-21**

Notice of Continuation August 13, 2007

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety Rules.
R920-50-1. Utah Ropeway Rules for Passenger Ropeways.

A. Introduction

These rules are issued pursuant to Utah Code Annotated, Section 72-11-210 to implement the Passenger Ropeway Safety Act, Utah Code Ann., Sections 72-11-201 et seq.

B. Governing Standard

1. The governing standards in Utah are the standards entitled "ANSI B-77.1, 2006" and "ANSI B77.2, 2004" as modified by rule of the Committee. The standards are published by the American National Standards Institute, 1430 Broadway, New York, New York 10018. The ANSI B77.1 was approved by ANSI on April 17, 2006, and the ANSI B77.2 was approved by ANSI on December 31, 2003. Use of these standards are authorized by Section 72-11-201.

2. The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

C. Classification of Ropeways and Applicable Standards

1. Section 1.2.4.1 of the Governing Standard is modified by the following requirements:

a. Existing installations need not comply with the new or revised requirements of the Governing Standard and these rules, except as set forth in R920-50-1.D.1.b;

b. Existing ropeways, when removed and reinstalled, shall be classified as new installations (see R920-50-1-C.2);

c. Ropeway modifications shall meet the requirements of R920-50-2.F and R920-50-8.

2. Section 1.2.4.2 of the Governing Standard is modified by the following requirement: New installations and those with design review completed by the Committee after the effective date of the Governing Standard, shall comply with the new or revised requirements of the Governing Standard and with these rules.

D. Inspections of Ropeways

1. The annual general inspection requirements stated in ANSI B77.1, 2.3.4.1, 3.3.4.1, 4.3.4.1, 5.3.4.1 and 6.3.4.1, are replaced by the following requirements:

a. An annual general or pre-operational inspection of each passenger ropeway shall be made by a Ropeway Inspector prior to approval of any application for licensure. An operational inspection of each passenger ropeway may be made by a Ropeway Inspector at least once a year during the high-use season. For each passenger ropeway inspected, items found either deficient or in noncompliance shall be noted. A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner. The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report or request an exception from the Governing Standard and applicable Utah Ropeway Operations Safety Rules. In addition to the annual general, pre-operational, and operational inspections, the Committee may order other inspections in accordance with Section 72-11-211;

b. All installations shall comply with the new or revised requirements of the Governing Standard and these rules in the following areas, on or before the effective date of each paragraph, as set forth below:

1. Requirements for auxiliary drives, as set forth in ANSI B77.1, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1. These requirements shall be effective November 1, 1994;

2. Requirement for one device that senses the position of the rope shall be installed on each sheave unit, as set forth in ANSI B77.1, 3.1.3.3.2, paragraph 6. This requirement shall be effective November 1, 1994;

3. Requirements for audible warning devices, as specified by ANSI B77.1, 2.1.1.12, 3.1.1.12. These requirements shall be effective November 1, 2001;

4. Section 4.1.1.12 of the Governing Standard is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the ropeway. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the ropeway begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level. These requirements shall be effective November 1, 2001;

5. "Qualified personnel" as used in X.1.1.11 means a qualified engineer approved by the Committee. A "aerial tramway specialist" as used in 2.3.4, "aerial lift specialist" as used in 3.3.4 and 4.3.4, "surface lift specialist" as used in 5.3.4, and a "tow specialist" as used in 6.3.4 means a ropeway inspector approved by the Committee.

c. Grips, clips, hangars, chairs, carriages and cabins shall be tested according to ANSI B77.1, X.3.4.3, except as modified in this subsection c.

1. Testing personnel shall be qualified in accordance with ASNT Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

2. Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

3. Sampling size and method of obtaining the sample shall comply with X.3.4.3 of the Governing Standard;

4. Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

5. Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

6. Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

d. Wire rope inspection shall be performed according to Annex A.4.1 of the Governing Standard and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

e. All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, and 7.3.

E. Conveyors Standards

1. Section 7 of the ANSI B77.1-2006 is modified by the following requirement:

a. Loading and unloading areas requirements of 7.1.1.9 shall also accommodate the use of adaptive devices.

b. "Qualified personnel" as used in 7.1.1.11 means a qualified engineer approved by the Committee. A "conveyor specialist" as used in 7.3.4 means a ropeway inspector approved by the Committee.

c. Power units referred to in 7.1.2.1 may not have reverse capability.

d. "Power supply cords" referred to in 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

e. The belt transition entry stop device referred to in 7.2.3.3 shall include redundant (double) sensors. Each sensor

shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

F. Dynamic Testing

1. Section X.3.3.1 is replaced with:

Foundations and structural, mechanical and electrical components shall be inspected regularly and kept in a state of good repair. The maintenance requirements of the designer or a Qualified Engineer (see X.1.6.2) shall be followed. Maintenance and testing logs shall be kept (see X.3.5.3).

2. Section X.3.3.1.2 is replaced with:

A written schedule for systematic dynamic testing shall be developed and followed. The schedule shall establish specific frequencies and conditions for periodic testing. The owner shall provide Experienced personnel to develop and conduct the dynamic test. The testing shall simulate or duplicate inertial loadings. The test load shall be equivalent to the design live load. Dynamic testing shall be performed at intervals not exceeding 7 years. The testing requirements shall include, but not be limited to the following:

a) braking systems;
b) auxiliary power units;
c) tension systems; and
d) electrical systems.

G. Tows.

Section 6.2.3.2.b) is replaced with:

Terminal areas: Installed on the incoming side so that the distance from the stop gate to the first obstruction is more than 150% of the distance required to stop the empty tow operating at maximum speed. The stop device shall extend across the tow beneath the incoming and outgoing rope;

H. Air Space Requirements

ANSI B77.1 Section 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2 section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway. These requirements are effective for ropeways or structures built after November 1, 2006.

R920-50-2. Definition of Terms.

A. "Aerial lift" means a ropeway on which passengers are transported in cabins or on chairs and that circulate in one direction between terminals without reversing the travel path.

B. "Aerial tramway (reversible)" means a ropeway on which the passengers are transported in cable-supported carriers are not in contact with the ground or snow surface, and in which the carrier(s) reciprocate between terminals.

C. "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.

D. "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with Committee rules.

E. "Committee" means the Passenger Ropeway Safety Committee as outlined in Section 72-11-202.

F. "Conveyor" means a device used to transport skiers uphill while standing on a flexible moving element which consists of multiple tread plates or belting.

G. "Detachable grip lift" means a ropeway system on which carriers circulate around the system alternately attaching to and detaching from a moving haul rope(s). The ropeway system may be monocable or bicable.

H. "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

I. "Funicular" means a ropeway in which carrier(s) are supported and guided by a guideway and are propelled by means of a haul rope system and operates as a single reversible or as a double reversible.

J. "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

K. "Modification" means any change as defined in the Governing Standard, ANSI B77.1 Standard 1.2.4.3 and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

L. "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with Committee rules.

M. "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

N. "Operator" means a person, including any political subdivision or instrumentality of the political subdivision, who owns, manages, or directs the operation of a passenger ropeway.

O. "Passenger" means any person riding a ropeway, other than "operating personnel".

P. "Passenger ropeway" means all devices that carry, pull, or push passengers along a level or inclined path(excluding elevators) by means of a haul rope or other flexible element that is driven by a power unit remaining essentially at a single location. Passenger ropeways include the following:

(1) aerial tramway (reversible);
(2) aerial lifts (detachable lifts, chair lifts and similar equipment);
(3) conveyor;
(4) funicular;
(5) rope tow (wire rope and fiber rope tows);and
(6) surface lifts (J-bar, T-bar, or platter pull and similar equipment).

Q. "Passenger Ropeway Incident" means:

1. Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

2. Any deropement regardless of whether or not the passenger ropeway is evacuated;

3. Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

4. Any fire involving a passenger ropeway component or adjacent structure;

5. Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in the Governing Standard, ANSI B77.1 Standard X.2.1.7.2;

6. Any wire rope damage which exceeds the requirement in the Governing Standard, ANSI B77.1 Standard 7.4.1.1; or

7. Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following;

a. Terminal Structure
b. Bullwheel
c. Brake System
d. Tower Structure
e. Sheave, Axle, or Sheave Assembly
f. Carrier
g. Grip.

R. "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

S. "Qualified engineer" means, notwithstanding any different definition in the ANSI B77.1 Standard, any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

T. "Responsible charge" means effective control and direction of projects of the type discussed in these rules.

U. "Rope tow" means a ropeway wherein passengers grasp a circulating fiber hauling rope or a towing device attached to a circulating wire rope or fiber rope and are propelled uphill. Passenger riding on recreational devices are also propelled uphill.

V. "Ropeway inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

W. "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not included.

X. "Surface lift" ("J bar," "T bar," or "platter pull," and similar equipment) means a ropeway wherein passengers or passengers on recreational devices are transported on the surface by means of towing devices propelled by a main overhead traveling wire rope supported by trestles or towers with one or more spans.

R920-50-3. Registration of Ropeways.

A. General

1. Purpose - In order to ensure that all passenger Ropeways conform with the requirements set forth by the Passenger Ropeway Act and these rules, all passenger Ropeways operating in the state of Utah shall be registered annually with the committee, and no passenger Ropeway shall be operated for passengers without a valid certificate of registration.

2. Term - Passenger Ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

3. New ropeways - Any passenger ropeway which shall be opened for the first time for passenger operation shall, during its first calendar year of operation, be construed to be a new ropeway for purposes stated in these rules.

4. Existing ropeways - Any passenger ropeway which shall have been operated for passengers in excess of one calendar year, shall be construed to be an existing ropeway for purposes stated in these rules.

5. Relocated ropeways - Any passenger ropeway moved to a new location shall be construed to be a new ropeway for purposes stipulated in these rules, with the exception that ropeways expressly designed to be portable, operated without a permanent foundation, and that have a design range of maximum grade, shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

6. Identification number - For each ropeway, upon receipt of the first application for a certificate of registration, the committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

7. All ropeway operators shall be covered by a liability insurance of a minimum of $300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

8. Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in accordance with requirements of these rules and shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Division of Safety
4501 South 2700 West
Salt Lake City, Utah 84119-5998

9. "As Built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test and Inspection is finished.

B. Attachments

In addition to supporting documents indicated in R920-50-4 or R920-50-7, each application is to include as attachments:

1. Certificate of insurance
2. Annual registration fee.

R920-50-4. Registration of New Ropeways.

A. Application for Certification of Registration

Prior to the operation of any new passenger ropeway, the operator shall apply to the Committee for a Certificate of Registration in such form as the Committee shall designate.

B. The Application must include the name, address and telephone number of operator of the ropeway, and operator's designation of the ropeway. The application and certifications must be in accordance with R920-50-3.A and submitted as follows:

1. A Pre-Operational Inspection Report must be submitted by an approved Ropeway Inspector, and must include the name and address of the Inspector and date of his or her inspection.

2. Any Request for Exception from Standards for Passenger Ropeway shall be submitted in accordance with R920-50-10. Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

3. A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted. The Qualified Engineer in responsible charge of the design shall certify to the Committee on the top drawing of the design drawing packet that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operations Safety Rules. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test and must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operations Safety Rules." This statement shall be placed on the top drawing of the drawing packet and signed and sealed by the Qualified Engineer. Each additional sheet of this drawing packet shall be sealed by the Qualified Engineer. Any variation from the design drawings shall be noted in the drawings and approved by the Qualified Design Engineer. The drawings and specifications shall include the Quality Assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

4. A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for New or Modified Ropeway. This Certification shall include the following statement, signed and dated by the ropeway owner or area operator: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from

Standards for Passenger Ropeway."

5. A Certification of Manufacture for Passenger Ropeway must be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this ropeway. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test. This Certification must include the following information:

a. Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway.

b. Name and address of manufacturing concern, and name, seal and Utah license number of the qualified engineer making certification.

c. A certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that the newly manufactured parts used in this ropeway, or ropeway modification, conform with the Utah Passenger Ropeway Safety Act, Governing Standard, the Utah Ropeway Operations Safety Rules and the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

6. A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test. This Certification shall include the following information:

a. Name, address and telephone number of operator of the ropeway name of ropeway supervisor, operator's designation of the ropeway identification number, as assigned by the committee for the ropeway;

b. Name, Utah license number and seal of the Qualified Engineer making the certification.

c. A certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

7. A final Acceptance Test report must be submitted to the Committee. A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. Acceptance inspection and tests will be scheduled by the Committee or Committee's representative as the acceptance test procedures are received. The owner or area operator shall notify the Committee in writing before the scheduled date that the passenger ropeway has been operated in accordance with the Governing Standard, section X.1.1.11.2.

8. A Certification of "As-Built" Profile for Passenger Ropeway must be submitted by a Land Surveyor or Civil Engineer licensed in the state of Utah. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test, and shall be signed by the Civil Engineer or Land Surveyor, and shall read as follows: "I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

9. A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Inspection and Test.

R920-50-5. Certificate of Registration.

If the application for certificate of registration and supporting documentation attest that the ropeway complies with the Governing Standard and these rules, the Committee, if satisfied with the facts stated in the application, shall issue a certificate of registration to the operator.

R920-50-6. Registration of Existing Ropeways.

A. Before November 1st, of each year, every operator of an Existing Passenger Ropeway who intends to operate the ropeway during the ensuing 12-month period shall apply to the Committee, in such form as the Committee shall designate, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

B. The Application shall include the following;

1. An Annual General Inspection Report by an approved Ropeway Inspector, including the name and address of the Inspector and date of inspection.

2. Approved Request for Exception from Standards for Passenger Ropeways which meets the requirements of R920-50-10, if applicable.

3. A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for Existing Ropeway. This Certification shall include the following statement, dated and signed by the ropeway owner or area operator:"I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

4. The Annual Registration Fee in accordance with R920-50-11.A.

R920-50-7. Modifications.

If a modification, as defined in R920-50-2(E) has been made to an existing ropeway, the data as required by R920-50-7 shall also be accompanied by a design certification, fabrication and materials certification, and a construction certification, and also a survey profile certification if applicable, submitted by a qualified engineer to cover the modification. Depending on the nature and extent of the modification, the Committee, or the Committee's appointed representative, may require an Acceptance Inspection and Test.

R920-50-8. Certificate of Registration.

If the application for certificate of registration and documentation required by R920-50-7 and R920-50-8, if applicable, attest that the existing ropeway complies with the governing standard and these rules, the committee, if satisfied with facts stated in the application, shall issue a certificate of registration to the owner.

R920-50-9. Exception.

A. In the event that the ropeway does not conform with the requirements set forth in R920-50-1-C, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted. The first type is an Annual Exception. It continues indefinitely, but this type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the committee that a change is necessary. The second type of exception is a Limited Exception. This type of exception is granted only for a fixed time period to be determined by the Committee. The nature of the exception shall be stated in the Request for Exception from Standards. The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the owner or area operator in writing of its action on the Request.

B. The Request for Exception from Standards shall include the following information:

1. Reasons for requesting an exception from requirements

set forth in R920-50-1-C.

2. Specification of the ways in which the ropeway does not conform to requirements set forth in R920-50-1-C.

3. Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance with the requirements set forth in R920-50-1-C.

C. Except as required in R920-50-10-F, the Committee shall issue a certification of registration with an exception if the operator satisfies the requirements stated in R920-50-10-B and also supplies the following for new or existing ropeways:

New Ropeways - A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C;

Existing Ropeways - A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C and a statement of the operator certifying that the ropeway has been operated safely and without any passenger ropeway incident, as defined in R920-50-2-J-1 or -7, related to the feature for which the exception is requested, for any period of time the ropeway has been operated up to 2 years prior to the date of the Request for Exception from Standards.

D. In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in R920-50-10-C if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C.

E. The issuance of a certificate of registration with an annual exception shall not bind the committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

F. In special cases where doubt exists as to the safety of a ropeway, the committee may require a special inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C.

R920-50-10. Violations.

The terms in this rule are outlined in Sections 72-11-212 and 72-11-213.

R920-50-11. Operation of Ropeways.

A. Operation and maintenance

Operators shall comply with the Governing Standard.

B. Reporting of Incidents

1. Every passenger ropeway incident, as defined in R920-50-2J shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

2. Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident.

3. The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Utah Code Annotated, Section 63-2-304 and are also governed by the provisions of Utah Code Annotated, Section 63-2-207.

4. When a passenger ropeway incident, as defined in R920-50-2J(1) or (7), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

C. Revocation of certificate of registration - Section 72-11-213.

R920-50-12. Ropeway Inspector and Qualified Engineer.

A. General

1. In order to promulgate the uniformity and reliability of the inspections required by law and these rules, and of ropeway designs, any person performing inspection services must be a "ropeway inspector" as required by these rules, and any person performing design services must be a "qualified engineer", as required by these rules.

2. The committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

3. Any person desiring to be approved by the committee as a ropeway inspector or qualified engineer shall submit a written request to the committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-14(B).

B. Requirements

1. Applicant shall satisfy the Ropeway committee that by his or her education, training and experience gained by participation in Ropeway inspections or designs as a principal or an assistant to a recognized Ropeway inspector or Ropeway designer, he or she is qualified to be, respectively, an approved inspector or Ropeway designer or both.

2. Applicant shall satisfy the committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and these rules.

3. The committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

4. The committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the committee to use the services and talents of qualified private engineers wherever possible.

C. Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

1. Practiced any fraud, misrepresentation, or deceit in applying for approval; or,

2. Caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

3. Been engaged in acts of unlawful or unprofessional conduct.

R920-50-13. Inspection Requirements.

1. The ropeway inspector shall verify that the intent of the design and operational requirements imposed by the Governing Standard and these rules are met.

2. Ropeway inspectors may inspect ropeways at any time

during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

R920-50-14. Administrative Procedures.

Appeals from orders issued pursuant to any provision of R920-50 shall be handled pursuant to R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits
February 13, 2007 72-11-201 through 72-11-216
Notice of Continuation August 13, 2007 63-46b-1 et seq.

R920. Transportation, Operations, Traffic and Safety.
R920-51. Safety Regulations for Railroads.
R920-51-1. Adoption of Federal Regulations.

Safety Regulations for Railroads, Title 49 Federal Railroad Administration, Department of Transportation is adopted by reference as it applies to all private, common, and contract carriers by rail in Interstate and/or Intrastate Commerce.

R920-51-2. Part 200 - Informal Rules of Practice for Passenger Service.

A. General
B. Definition
C. Application
D. Objections
E. Hearings
F. Orders, approvals and determinations
G. Publication

R920-51-3. Part 201 - Formal Rules of Practice for Passenger Service.

A. General
B. Definitions
C. Scope of regulations
D. Application
E. Notice of hearing
F. Notification by interested persons
G. Presiding officer
H. Direct testimony submitted as written documents
I. Mailing address
J. Inspection and copying of documents
K. Ex parte communications
L. Prehearing conference
M. Final agenda of the hearing
N. Determination to cancel the hearing
O. Rebuttal testimony and new issues of fact in final agenda
P. Waiver of right to participate
Q. Conduct of the hearing
R. Direct testimony
S. Cross-examination
T. Oral and written arguments
U. Recommended decision, certification of the transcript, and submission of comments in the recommended decision.

R920-51-4. Railroad Safety Enforcement Procedures.

A. Subpart A - General
B. Subpart B - Hazardous Materials Penalties

R920-51-5. Part 210 - Railroad Noise Emission Compliance Regulations.

A. Subpart A - General Provisions
B. Subpart B - Inspection and testing

R920-51-6. Part 211 - Rules of Practice.

A. Subpart A - General
B. Subpart B - Rulemaking Procedures
C. Subpart C - Waivers
D. Subpart D - Emergency Orders
E. Subpart E - Miscellaneous Safety - Related Proceedings and Inquiries
F. Subpart F - Interim Procedures for the Review of Emergency Orders

R920-51-7. Part 212 - State Safety Participation Regulations.

A. Subpart A - General
B. Subpart B - State/Federal Roles
C. Subpart C - State Inspection Personnel
D. Subpart D - Grants in Aid

R920-51-8. Part 213 - Track Safety Standards.

A. Subpart A - General
B. Subpart B - Roadbed
C. Subpart C - Track Geometry
D. Subpart D - Track Structure
E. Subpart E - Track Appliances and Track Related Devices
F. Subpart F - Inspections

R920-51-9. Part 215 - Railroad Freight Car Safety Standards.

A. Subpart A - General
B. Subpart B - Freight Car Components
C. Subpart C - Restricted Equipment
D. Subpart D - Stenciling

R920-51-10. Part 216 - Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment.

A. Subpart A - General
B. Subpart B - Special Notice for Repair
C. Subpart C - Emergency Order - Track

R920-51-11. Part 217 - Railroad Operating Rules.

A. Subpart A - General

R920-51-12. Part 218 - Railroad Operating Rules.

A. Subpart A - General
B. Subpart B - Blue Signal Protection of Workmen
C. Subpart C - Protection of Trains and Locomotives

R920-51-13. Part 220 - Radio Standards and Procedures.

A. Subpart A - General
B. Subpart B - Radio Procedures
C. Subpart C - Train Orders

R920-51-14. Part 221 - Rear End Marking Device - Passenger, Commuter and Freight Trains.

A. Subpart A - General
B. Subpart B - Marking Devices

R920-51-15. Part 223 - Safety Glazing Standards - Locomotives, Passenger Cars and Cabooses.

A. Subpart A - General
B. Subpart B - Specific Requirements

R920-51-16. Part 225 - Railroad Accidents/Incidents: Reports Classification, and Investigations.

A. Purpose
1. Applicability
2. Definitions
3. Public examination and use of reports
4. Telephonic reports of certain accidents/incidents
5. Reporting of accidents/incidents
6. Late reports
7. Accident/incidents not to be reported
8. Doubtful cases
9. Primary groups of accidents/incidents
10. Forms
11. Joint operations
12. Recordkeeping
13. Retention of records
14. Penalties

R920-51-17. Part 228 - Hours of Service of Railroad Employees.

A. Subpart A - General
B. Subpart B - Records and Reporting
C. Subpart C - Construction of Employee Sleeping

Quarters

R920-51-18. Part 229 - Railroad Locomotive Safety Standards.
A. Subpart A - General
B. Subpart B - Inspections and Tests
C. Subpart C - Safety Requirements
D. Subpart D - Design Requirements

R920-51-19. Part 230 - Locomotive Inspection.
A. Steam Powered Locomotives

R920-51-20. Part 231 - Railroad Safety Appliance Standards.
A. Box and other house cars
B. Hopper cars and high-side gondolas with fixed ends
C. Drop-end high-side gondola cars
D. Fixed-end low-side gondola and low-side hopper cars
E. Drop-end low-side gondola cars
F. Flat cars
G. Tank cars with side platforms
H. Tank cars without side sills and tank cars with short side sills and end platforms
I. Tank cars without end sills
J. Caboose cars with platforms
K. Caboose cars without platforms
L. Passenger-train cars with wide vestibules
M. Passenger-train cars with open-end platforms
N. Passenger-train cars without end platforms
O. Steam locomotives used in switching service
P. Specifications common to all steam locomotives
Q. Cars of special construction
R. Definition of "Right" and "Left"
S. Variation in size permitted
T. Tank cars without under frames
U. Unidirectional passenger-train cars adoptable to van-type semi-trailer use
V. Box and other house cars with roofs, 16 feet 10 inches or more above top of rail
W. Track motorcars (self-propelled 4-wheel cars which can be removed from the rails by men)
X. Pushcars
Y. Box and other house cars without roof hatches
Z. Box and other house cars with roof hatches
AA. Road locomotives with corner stairways
AB. Locomotives used in switching service

R920-51-21. Part 232 - Railroad Power Brakes and Drawbars.
A. Power brakes; minimum percentage
B. Drawbars; standard height
C. Power brakes and appliances for operating power brake systems
D. Rules for Inspection, Testing and Maintenance of Air Brake Equipment
E. General rules; locomotives
F. Train air brake system tests
G. Initial terminal road train airbrake tests
H. Road train and intermediate terminal train airbrake tests
I. Inbound brake equipment inspection
J. Double heading and helper service
K. Running tests
L. Freight and passenger train car brakes
M. Appendix-Specifications and requirements for power brakes and appliances for operating power-brake systems for freight service

R920-51-22. Part 233 - Signal Systems Reporting Requirements.
A. Scope
1. Application
2. Accidents resulting from signal failure
3. Signal failure reports
4. Annual reports
5. Civil penalty
6. Criminal penalty

R920-51-23. Part 235 - Instructions Governing Applications for Approval of a Discontinuance or Material Modification for a Signal System.
A. Scope
1. Discontinuance or modification requiring filing of application
2. Discontinuance or modification not requiring filing of application
3. Form of application
4. Contents of application
5. Additional required information-prints
6. Filing procedure
7. Notice
8. Protests

R920-51-24. Part 236 - Installation, Specification, Maintenance, and Repair of Systems, Devices and Appliances.
A. Applicability of this part, relief and instructions governing applications for relief
B. Subpart A - Rules and Instructions: All Systems
C. Subpart B - Automatic Block Signal System
D. Subpart C - Interlocking
E. Subpart D - Traffic Control Systems
F. Subpart E - Automatic Train Stop, Train Control and Cab Signal Systems
G. Subpart F - Dragging Equipment and Slide Detectors and Other Similar Protective Devices
H. Subpart G - Definitions

KEY: railroads, safety regulation
1987 63-49-8(5)(C)
Notice of Continuation August 13, 2007

R994. Workforce Services, Unemployment Insurance.
R994-315. Centralized New Hire Registry Reporting.
R994-315-101. Authority.

This rule is authorized by 35A-7-101 et seq. Utah Code Ann. 1953.

R994-315-102. Definitions.

In addition to definitions included in 35A-7-102, this rule makes the following definition:

(1) Multi-state Employer: A multi-state employer is defined as an employer who has employees in two or more States and who transmits new hire reports magnetically or electronically.

R994-315-103. Reporting Formats.

Employers may submit information by paper, magnetic tape, cartridge, or diskette or electronically. Submittals should not be duplicated.

(1) Paper

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)

(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

(2) Magnetic Media

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

(3) Electronic Media

Employers may submit information by Internet on-line data entry or Internet electronic file transfer. Electronic Media must be submitted according to specifications approved by the Department.

R994-315-104. Multi-state Employers.

(1) Multi-state employers have the option to report all new hires to a single state, chosen by the employer, in which the employer has employees. To exercise this option, the employer must designate one state for reporting new hires, transmit the report magnetically or electronically, and notify the Secretary of Health and Human Services in writing.

The letter of request should include the following information:

(a) Employer Federal ID Number (FEIN).

(b) Any other FEIN's under which the employer does business.

(c) Employer Company name, address and telephone number.

(d) The state to which the employer will report all workers.

(e) A list of states in which the employer employs workers.

(f) Name and phone number of person responsible for providing data.

R994-315-105. Waiver of Penalty for Failure to Report.

(1) An employer that fails to report the hiring or re-hiring of an employee in a timely manner is subject to a civil penalty of $25 for each such failure in accordance with Section 35A-7-106. The $25 penalty will be waived if the employer can show good cause for failure to provide the required new hire report(s). Good cause may be established if the employer was prevented from filing a new hire report due to circumstances which were compelling and reasonable or beyond its immediate control. Payment of the $25 penalty does not relieve the employer from the responsibility of filing the required new hire report(s).

KEY: new hire registry
August 8, 2007 **35A-7-101 et seq.**
Notice of Continuation June 11, 2004 **42 U.S.C. 654(a) et seq.**
Pub. L. No. 104-193

R994. Workforce Services, Unemployment Insurance.
R994-405. Ineligibility for Benefits.
R994-405-1. Determining the Reason for Separation.

When a job ends and a claim is filed, the Department must determine the reason for the separation. If there is more than one separation from the same employer, eligibility for benefits will be based on the reason for the last separation occurring prior to the date the claim is filed. However, an existing prior denial of benefits which resulted in a disqualification based on a prior separation from the same employer, will continue until the claimant has earned six times the weekly benefit amount on the claim in which the disqualification took place.) Charge decisions will also be made on the last separation as provided in rule R994-307-101(1)(a)(i). A separation decision will be made and may affect eligibility even if the employer is not covered by the Act except no separation decision will be made on noncovered self employment cases.

R994-405-2. Separations From a Temporary Help Company (THC).

THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims will be based on the reason for separation from the THC and not the reason for the separation from the client company.

(1) If the claimant reports back to the THC within a reasonable period of time after the claimant's last assignment ends and no work is offered because no work is available, the separation is a reduction of force, regardless of the reason the claimant left the last assignment except as provided in paragraph (2) of this section. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days. The claimant must contact the THC prior to filing a claim for benefits with the Department for the separation to be considered a reduction of force.

(2) If a claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do, it is considered a quit and the THC may be eligible for relief of charges.

(3) If the claimant fails to contact the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends, the separation is a quit and not a reduction of force.

(4) If the claimant files a new claim or reopens an existing claim prior to contacting the THC for another assignment, the job separation is a quit, even if the claimant subsequently contacts the THC within a reasonable period of time.

(5) If the claimant contacts the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends and the claimant refuses a new assignment, the job separation is a quit if the new assignment is similar to the previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The job duties, wages, hours, and conditions of the new assignment should be considered in determining the similarity of the new assignment.

(6) If the THC refuses to the send the claimant out on any new assignments it is a discharge. This includes instances where the claimant previously left an ongoing assignment or the client company prevented the claimant from completing an ongoing assignment.

R994-405-3. Professional Employment Organizations (PEO).

(1) PEO is defined in R994-202-106 and must be registered pursuant to Sections 58-59-101 et seq. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

R994-405-101. Voluntary Leaving (Quit) - General Information.

(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:

(a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),

(b) a suspension, or

(c) a period of absence initiated by the claimant.

(2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be

considered under the equity and good conscience standard.

R994-405-102. Good Cause.

To establish good cause, a claimant must show that continuing the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause will not be found if the claimant:

(i) reasonably could have continued working while looking for other employment,

(ii) had reasonable alternatives that would have made it possible to preserve the job like using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the claimant was required by the employer to violate state or federal law or if the claimant's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Section R994-405-306. The fact the claimant accepted a job does not necessarily make the job suitable. The longer a job is held, the more it tends to negate the argument that the job was unsuitable. After a reasonable period of time a contention the quit was motivated by unsuitability of the job is generally no longer persuasive. The Department has an affirmative duty to determine whether the employment was suitable, even if the claimant does not raise suitability as an issue.

R994-405-103. Equity and Good Conscience.

(1) If the good cause standard has not been met, the equity and good conscience standard must be considered in all cases except those involving a quit to accompany, follow, or join a spouse as provided in R994-405-104. If there are mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the claimant:

(a) acted reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action, and,

(b) demonstrated a continuing attachment to the labor market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. An active work search, as provided in R994-403-113c, should have commenced immediately after the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the claimant to seek work. Some circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

(1) If a claimant quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact. If the claimant's employment is contingent on the spouse's military assignment and the spouse is reassigned, the separation will be considered a discharge.

(2) For the purposes of this section, spouse is considered to include a significant other.

(3) Quitting to get married is also disqualifying as provided in R994-405-107(7)(a).

R994-405-105. Burden of Proof in a Quit.

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met. The failure of the claimant to provide information will not necessarily result in a ruling favorable to the employer. If the claimant quit unsuitable new work, the burden of proof as described in R994-405-308 applies.

R994-405-106. Quit or Discharge.

(1) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

(2) Leaving Prior to Effective Date of Termination.

(a) If a claimant leaves work prior to the date of an impending reduction of force, the separation is a quit. Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not disqualified for quitting benefits will be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) If the claimant quit to avoid a disqualifying discharge the separation will be adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a quit unless the claimant was previously disqualified as a result of the suspension.

(4) Leave of Absence.

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the claimant will be considered unemployed and the separation is adjudicated as a quit, even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a claimant hears rumors or other information suggesting he or she is to be laid off or discharged, the claimant has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge or lay off the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a claimant gives notice of his or her intent to leave at a future date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a claimant resigns but later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

(b) Discharge.

If a claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. Merely assigning vacation pay not previously assigned to the notice period does not make the separation a quit.

(7) If an employer tells a claimant it intends to discharge the claimant but allows the claimant to stay at work until he or she finds another job and the claimant decides to leave before finding another job, the separation is a quit. Good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge him or her.

R994-405-107. Examples of Reasons for Quitting.

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. Occasionally, after giving notice, but prior to leaving the first job, a claimant may learn the new job will not be available when promised, or is not permanent, full-time, or suitable. Good cause may be established in those circumstances if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile. However, if it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification will be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits will be denied for failure to accept all available work from the prior employer under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

(2) Reduction of Hours.

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe the circumstances justify leaving.

(3) Personal Circumstances.

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the claimant made a reasonable attempt to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) Religious Beliefs.

To support an award of benefits following a voluntary separation due to religious beliefs, the work must conflict with a sincerely held religious or moral conviction. If a claimant was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) Transportation.

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for quitting employment. Therefore, if the claimant quit to get married, benefits will be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for a claimant to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is causing the harassment, the requirement that the employer be given an opportunity to stop the conduct is not necessary. Sexual harassment is a form of sex discrimination prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is the cause of the discrimination, the requirement that the employer be given an opportunity to stop the conduct is not necessary. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If the employer wishes to reduce its workforce and gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.

R994-405-108. Effective Date of Disqualification and Period of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

R994-405-109. Proximate Cause in a Quit.

The claimant must show a relationship between the reason or reasons for quitting both as to cause and time. If the claimant did not quit immediately after becoming aware of the adverse conditions which led to the decision to quit, a presumption arises that the claimant quit for other reasons. The presumption may be overcome by showing the delay was due to the claimant's reasonable attempts to cure the problem.

R994-405-201. Discharge - General Definition.

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits will be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the claimant. A reduction of force is considered a discharge without just cause.

R994-405-202. Just Cause.

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. An employer might not be able to demonstrate that a single violation, even though harmful, would be repeated by a long-term employee with an established pattern of complying with the employer's rules. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The claimant must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown the claimant should have been able to anticipate the negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the claimant had knowledge of the expected conduct. After a warning the claimant should have been given an opportunity to correct the objectionable conduct. If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving

a discharge due to unsatisfactory work performance, it must be shown the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

R994-405-203. Burden of Proof in a Discharge.

In a discharge, the employer initiates the separation and therefore has the burden to prove there was just cause for discharging the claimant. The failure of the employer to provide information will not necessarily result in a ruling favorable to the claimant. Interested parties have the right to rebut information contrary to their interests.

R994-405-204. Quit or Discharge.

The circumstances of the separation as found by the Department determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice, or the claimant's report are not controlling.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date. Unless there is some other evidence of disqualifying conduct, benefits will be awarded.

(b) Quit.

If the claimant gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. The claimant is not considered to have quit merely by saying he or she is looking for a new job. If a claimant resigns but later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

(2) Leaving in Anticipation of Discharge.

If a claimant leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. A claimant may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation is considered a discharge.

(3) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

R994-405-205. Disciplinary Suspension.

When a claimant is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If a claimant files during the suspension period, the matter will be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the claimant fails to return to work at the end of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

R994-405-206. Proximate Cause - Relation of the Offense to the Discharge.

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the claimant. If a separation decision has been made, it is generally demonstrated by giving notice to the claimant. Although the employer may learn of other offenses following the decision to terminate the claimant's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged a claimant because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the claimant's conduct. If a claimant files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a claimant's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

R994-405-207. In Connection with Employment.

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers include: goodwill, efficiency, employee morale, discipline, honesty and trust.

R994-405-208. Examples of Reasons for Discharge.

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

(1) Violation of Company Rules.

If a claimant violates a reasonable employment rule and just cause is established, benefits will be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a claimant believes a rule is unreasonable, the claimant generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying

conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a claimant was given notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct do not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a claimant to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the claimant knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the claimant's control is generally not disqualifying unless the claimant could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the claimant's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the claimant's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the claimant's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied regardless of whether the claimant would have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a claimant, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When a claimant engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the welfare of the general public, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and that was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his or her separation was consistent with the employer's written drug and alcohol policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

R994-405-209. Effective Date of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance

or vacation pay cannot be used as requalifying wages.

R994-405-210. Discharge for Crime - General Definition.

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in common usage "crime" is used to denote offenses of a more serious nature, the term "crime" as used in these sections, includes "misdemeanors". An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established the claimant was discharged for a crime that:

(a) was in connection with work,

(b) involved dishonesty constituting a crime or a felony or class A misdemeanor, and

(c) was admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

R994-405-211. In Connection with Work.

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

R994-405-212. Dishonesty or Other Disqualifying Crimes.

(1) For the purposes of this subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful means and thereafter converting it to the taker's own use. Theft includes:

(a) obtaining or exerting unauthorized control over property;

(b) obtaining control over property by threat or deception;

(c) obtaining control knowing the property was stolen; and,

(d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors are also disqualifying even if they are not theft-related such as assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

R994-405-213. Admission or Conviction in a Court.

(1) An admission offered to satisfy the requirements of R994-405-210(1)(c), must be a voluntary statement, verbal or written, in which a claimant acknowledges committing an act that is a violation of the law. The admission does not necessarily have to be made to a Department representative, however, the admission must have been made freely and not a false statement given under duress or made to obtain some concession.

(2) If the requirements of R994-405-210(1) have been met, a disqualification may be assessed even if no criminal charges have been filed and even if it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court or enters a plea in abeyance, there is a rebuttable presumption, for the purposes of this subsection, that the claimant has admitted to the criminal act.

(3) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

R994-405-214. Disqualification Period.

The 52-week disqualification period for Subsection 35A-4-405(2)(b) begins the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

R994-405-215. Deletion of Wage Credits.

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims. Lag period wages are wages paid after the base period but prior to the effective date of the claim.

R994-405-301. Failure to Apply for or Accept Suitable Work.

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

(a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

(b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

(i) accept a referral, or

(ii) properly apply for work, or

(iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

(a) the job is not suitable;

(b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or

(c) a denial of benefits would be contrary to equity and good conscience.

R994-405-302. Failure to Accept a Referral.

(1) Definition of a Referral. A referral occurs when the department provides information about a job opening to the claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

R994-405-303. Proper Application for Work.

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

(1) meet with the employer at the designated time and place,

(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought,

(3) present no unreasonable conditions or restrictions on acceptance of the available work and

(4) report for and pass a drug test if necessary.

R994-405-304. Failure to Accept an Offer of Work.

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

R994-405-305. Suitability of Work.

(1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.

(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

R994-405-306. Elements to Consider in Determining Suitability.

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.

(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.

(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.

(2) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.

(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.

(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.

(3) Working Conditions.

"Working conditions" refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:

(a) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(b) Benefits in Addition to Wages.

Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.

(c) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in

violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

(4) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

(5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-307. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

R994-405-308. Burden of Proof.

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be contrary to equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

R994-405-309. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) begins the Sunday of the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless

the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

R994-405-310. Good Cause.

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

R994-405-311. Equity and Good Conscience.

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there are mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the decision to refuse the offer of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after the week the job in question was available.

R994-405-401. Strike.

Claimants may be ineligible for unemployment benefits when the unemployment is due to a strike.

R994-405-402. Elements Necessary for a Disqualification.

All of the following elements must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment;

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment the strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers, and,

(7) the strike must not have been caused by the employer's failure to comply with State or Federal laws governing wages, hours or other conditions of work.

R994-405-403. Unemployment Due to a Strike.

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike;

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations,

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required,

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration, or

(d) upon the expiration of an existing contract, whether or not negotiations have ceased, the employer is willing to furnish work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike;

(a) the claimant was separated from employment for some other reason that occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent,

(b) the claimant was replaced by other permanent employees,

(c) the claimant was on a temporary layoff, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his or her regular job when called on the predetermined date his or her subsequent unemployment is due to a strike,

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike,

(e) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration, or

(f) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic sanctions. A lockout occurs when;

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions,

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called., or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a disqualifying strike, and then obtained work for employer B where he or she worked for a short period of time before being laid off due to reduction of force. If he or she then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his or her employment with employer B, the claimant is not eligible for unemployment benefits.

R994-405-405. Fomented by the Employer.

A strike will not result in a denial of benefits to claimants if the employer or any of its agents or representatives conspired, planned or agreed with any of the workers in promoting or inciting the development of the strike.

R994-405-406. Work Stoppage.

Work stoppage means that the claimant is no longer working but it is not necessary for the employer to be unable to continue to conduct business. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

R994-405-407. Grade, Group or Class of Worker.

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if the claimant is not a member of the group conducting the strike or not in sympathy with its purposes,

(b) the labor dispute concerns all of the employees and as a direct result causes a stoppage of their work,

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) the claimant voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) A claimant is not included in the grade, group or class if:

(a) the claimant is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute,

(b) the claimant was an employee of a company that has no work for him or her as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation,

(c) the claimant was an employee of a company that is out of work as a result of a strike at one of its work sites but he or she is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

(3) The burden of proof is on the claimant to show that he or she is not participating in any way in the strike.

R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.

If the strike was caused by the employer's failure to comply with state or federal laws governing wages, hours, or working conditions, the claimant is not disqualified as a result of the strike. However, to establish the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

R994-405-409. Period of Disqualification.

The period of disqualification begins on the effective date of the new or reopened claim and continues as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be assessed.

R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).

(1) Ineligibility following a strike. A disqualification must be assessed if the elements for disqualification are present, even if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike that are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his or her unemployment due to a strike, a new claim may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-

405(4) no longer apply. Any such redetermination must be requested by the claimant and will be effective the beginning of the week in which the request for a redetermination is made.

R994-405-411. Availability.

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability that will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

R994-405-412. Suitability of Work Available Due to a Strike.

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits will not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-413. Strike Benefits.

Strike benefits received by a claimant, which are paid contingent upon walking a picket line or for other services, are reportable income that must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury that requires no personal services is not reportable income.

R994-405-701. Payments Following Separation - General Definition.

Vacation and severance payments which a claimant is receiving, has received or is entitled to receive are treated as wages and the claimant's WBA is reduced as provided in R994-401-301(1). This is true even though vacation or severance payments do not meet the statutory definition of wages.

R994-405-702. Definition of Disqualifying Vacation and Severance Pay.

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he or she is eligible to receive payment from the employer whether the payment has already been made or will be made. The week in which the payment is actually received is not controlling in determining when the payment is deductible. It is not necessary for the employer to assign such payment to a particular week on the payroll records.

(b) Severance or Vacation Pay Which Is Subject to Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, a union, or the employer, it has not been established the claimant is entitled to payment and therefore a disqualification cannot be assessed. However, when it is determined the claimant is entitled to receive payment from the employer, a disqualification will be assessed beginning with the week in which the agreement is made establishing the right to payment, provided the other elements are present. An overpayment will be established as appropriate.

(2) Vacation Pay.

Vacation pay is not considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. Payments made directly to the claimant after separation and intended for the purchase of health insurance, whether made in a lump sum or periodically, are considered separation payments. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. Accrued sick leave, paid at the time of separation not because of an illness or injury is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was entitled to two weeks of vacation or severance pay at his or her regular wage or salary, the last day worked was a Wednesday, and his or her normal working days were Monday through Friday, the claimant is considered to have two weeks of pay beginning on the Thursday following the last day of work. The claimant's earnings for the first week, including his or her wages would normally exceed the weekly benefit amount; the claimant would have a full week of pay for the second week, and would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the last day of work is equivalent to the number of days during which the worker would have received a similar amount of his or her regular pay. For example, if the claimant received $500 in severance pay, and last earned $10 an hour working a 40 hour week, the claimant's customary weekly earnings were $400 a

week. The claimant is denied benefits for one week and must report $100 as if it were earnings on the claim for the following week. The Department will ordinarily use a claimant's base salary for calculations in this paragraph but if the claimant provides verifiable evidence of a rate of pay higher than the base salary in the period immediately preceding separation, that can be used.

(c) Payments Less than Weekly Benefit Amount. If separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) Temporary Separation.

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) Designated as a week of vacation. If the separation from the employer is not permanent and the claimant chooses to take his or her vacation pay, or is filing during the time previously agreed to as his or her vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation pay and at the time of a temporary layoff the claimant may still take his or her vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) Designated as a vacation shutdown. If the claimant files during a vacation shutdown, and is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his or her time off work before or after the vacation shutdown. A holiday shutdown is treated the same as a vacation shutdown.

R994-405-703. Period of Disqualification.

Only those payments equal to or greater than the claimant's weekly benefit amount require a disqualification. Payments less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

R994-405-704. Disqualifying Separations.

If the claimant has been disqualified as the result of his or her separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in bona fide covered employment.

R994-405-705. Base Period Wages.

Vacation pay is used as base period wages. Separation payments attributable to weeks following the separation can be used as base period wages if the employer was legally required to make such payments as provided in Section 35A-4-208. Separation payments that are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(4).

R994-405-801. Services in Education Institutions - General Definition.

Subsection 35A-4-405(8) denies unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant has been given a reasonable assurance that he or she can return to work when school resumes and the claimant intends to return when school resumes. Schools have traditionally not been in session during the summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. In extending coverage to school employees, it was intended such coverage would only be available when the claimant is no longer attached in any way to a school and the reason for the unemployment is not due to normal school recesses or paid sabbatical leave.

R994-405-802. Elements Required for Denial.

(1) The claimant is ineligible if all of the following elements are met:

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

R994-405-803. Educational Institution (School).

(1) To be considered an educational institution it is not necessary the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" that meets all of the following elements:

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training is academic, technical, trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or licensed to operate as a school by the State Board of Education or other government agency authorized to issue such license or permit.

(2) Head start programs operated by community based organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

R994-405-804. Employee for an Educational Institution.

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also, employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a school bus driver is employed by the city rather than the school district, he or she is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if there are base period wages from an educational

institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, the claimant may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he or she is otherwise eligible. If the claimant continues to be unemployed when school commences, he or she may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a request for a revision to include school employment.

R994-405-805. Reasonable Assurance.

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she will not be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he or she will not be recalled by the school where he or she last worked as a teacher's aide, but then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the separation or the claim, whichever is later.

R994-405-806. Substitute Teachers.

A substitute teacher is treated the same as any other school employee. If the claimant worked as a substitute teacher during the prior school term, he or she is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits will be denied when school is not in session. However, for any weeks the claimant is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

R994-405-807. Period of Disqualification.

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits will be denied for a week that begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks:

(1) between two successive academic years or terms, or

(2) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave, benefits may be allowed provided he or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

R994-405-808. Retroactive Payments.

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is not a professional employee in an instructional, research or administrative capacity,

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms,

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

R994-405-901. Professional Athletes.

(1) Eligibility for Professional Athletes.

A claimant who has performed services as a professional athlete for substantially all of his or her base period is not eligible for benefits between successive sports seasons or similar periods when the claimant has a reasonable assurance of performing those services in the next sports season or similar period.

(2) Substantially All Services Performed in a Base Period.

A claimant has performed services as a professional athlete for substantially all of his or her base period when the base period wages from that work equal 90 percent or more of the claimant's total base period wages.

(3) Definition of Professional Athlete.

For the purposes of determining eligibility for benefits, a claimant is a professional athlete when he or she is employed as a competitive athlete or works as a specified ancillary employee. Employment as a competitive athlete includes preparing for and participating in competitive sports events. Specified ancillary employees are managers, coaches, and trainers who are employed by professional sports organizations and referees and umpires employed by professional sports leagues or associations.

(4) Reasonable Assurance.

(a) The claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period when the claimant has:

(i) a multi-year contract with a professional sports organization, league or association;

(ii) a year-to-year contract and no indication of release;

(iii) no contract but the employer affirms intent to recall;

(iv) no contract but an employer representative confirms that the claimant is being considered for next season; or

(v) no contract but plans to pursue employment as a professional athlete.

(b) The claimant does not have a reasonable assurance if he or she has no contract and has withdrawn from sports as a professional athlete.

R994-405-902. Base Period Wage Credits.

(1) If the claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period and 90 percent or more of the claimant's base period wage credits were earned as a professional athlete, neither those wage credits nor any other base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between the applicable sports seasons or similar periods.

(2) All of the claimant's base period wage credits can be used if the claimant did not earn 90 percent or more of his or her base period wage credits as a professional athlete.

(3) All of the claimant's base period wages credits can be used to establish monetary eligibility for any weeks that begin during the applicable sports season or similar period.

R994-405-1001. Aliens - General Definition.

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the individual is a citizen or national of the United States, or if not, whether the individual is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence that the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

R994-405-1002. Alien Status.

(1) An alien may establish wage credits and qualify for benefit payments if he was:

(a) Lawfully admitted for permanent residence at the time the services were performed, or

(b) Lawfully present for the purpose of performing the services, or

(c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

R994-405-1003. Lawfully Admitted for Permanent Residence.

An individual who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by INS.

R994-405-1004. Lawfully Present for the Purpose of Performing Services.

These are aliens with work permits issued by INS who have received permission to work in the United States. Aliens who do not possess INS documentation have not been processed through INS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by INS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

R994-405-1005. Permanently Residing in U.S. Under Color of Law.

Eligibility can be established if:

(1) The INS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the INS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the INS as individuals who are permanently residing "under color of law."

R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave which are admitted on parole for medical treatment. All of these individuals are issued INS forms endorsed to show work status.

R994-405-1007. Procedural Requirements.

(1) Verification of Status.

If the claimant states he is an alien, he must present documentary evidence of his alien status. Acceptable evidence includes:

(a) An alien registration document or other proof of immigration registration from INS that contains the individual's alien admission number or alien file number, or

(b) Other documents which constitute reasonable evidence indicating a satisfactory alien status such as a passport.

(2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the INS through an automated system or other system designated by the INS. This system must protect the claimant's privacy as required by law. The Department must use the individual's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the Department must submit a photocopy of the documents to INS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the INS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances which would justify an extension of the time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate

a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment, if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

R994-405-1008. Preponderance of Evidence.

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence that they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while INS is being contacted for verification.

R994-405-1009. Availability for Work.

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination that the alien is deportable.

R994-405-1010. Periods of Ineligibility.

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, he is ineligible under Subsection 35A-4-403(1)(c) because he cannot legally obtain employment.

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Notice of Continuation June 26, 2007 35A-1-104(4)
35A-4-405

R994. Workforce Services, Unemployment Insurance.
R994-508. Appeal Procedures.
R994-508-101. Right to Appeal an Initial Department Determination.

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) If the initial Department determination was delivered to the party, the time permitted for an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination. Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the right to request an in-person hearing;

(d) the legal issues to be considered at the hearing;

(e) the procedure for submitting written documents;

(f) the consequences of not participating;

(g) the procedures and limitations for requesting a continuance or rescheduling; and

(h) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing.

Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less intimidating;

(c) it is not unduly burdensome;

(d) it is necessary for the parties to properly prepare for the hearing; and

(e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

(a) reschedule the hearing to another time;

(b) allow the parties time to review the documents at an in-person hearing;

(c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or

(d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

(1) Hearings are usually scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing.

(2) If a party prefers an in-person hearing, the party must contact the ALJ assigned to hear the case and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will permit collect calls from parties and their witnesses participating in telephone hearings; however, professional representatives not at the physical location of their client must pay their own telephone charges.

R994-508-111. Evidence, Including Hearsay Evidence.

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance

system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R994-508-112. Procedure For Use of an Interpreter at the Hearing.

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R994-508-116. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case.

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R994-508-118. What Constitutes Grounds to Reopen a Hearing.

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might effect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-119. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-120. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-121. Correction of Error and Augmentation of the Record.

A party may request correction of an ALJ decision if the request is made in writing and filed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Utah Code Subsections 35A-4-406(2) and 35A-4-406(3) unless the Board has accepted an appeal. If the ALJ agrees to grant the request for correction, a new decision will be issued and new appeal rights to the Board will be established. If the ALJ denies the request, the request will be treated as an appeal to the Board.

R994-508-122. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Attorney Fees.

(1) An attorney or other authorized representative may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. An attorney or representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Attorney's Fee.

The claimant or the authorized representative may appeal

the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board my remand the case to the Department or the ALJ when appropriate. (5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-306. Reconsideration of a Decision of the Board.

A party may request reconsideration of a decision of the Board in accordance with Utah Code Subsection 63-46b-13.

R994-508-307. Withdrawal of Appeal to the Board.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within 30 days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of

making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

KEY: unemployment compensation, appellate procedures

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