R58. Agriculture and Food, Animal Industry.
R58-19. Compliance Procedures.
R58-19-1. Authority.

This rule is promulgated by the Division of Animal Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(1)(j).

R58-19-2. Definition of Terms.

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-32-7, 4-32-16, 4-32-17, 4-31-17, 4-39-107, and 9 CFR-III 303.1 through 381.207.

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R58-19-3. Emergency Order.

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R58-19-4. Citation.

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or line for the signature of the person (a signature is not required if the person refuses),

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following:

TABLE
Penalty Amounts

1	Citation per violation	$100
2	Citation per head	$ 2
(If not paid within 15 days, 2 times citation amount)		
(If not paid within 30 days, 4 times citation amount)		

R58-19-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law
February 12, 2002 4-2-2(1)(j)
Notice of Continuation September 12, 2007

R65. Agriculture and Food, Marketing and Development.
R65-11. Utah Sheep Marketing Order.
R65-11-1. Authority.

A. Promulgated under authority of Subsection 4-2-2(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the sheep producing industry. The commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum. It is therefore ordered by the commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah sheep industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-11-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Sheep" means rams, ewes, or lambs.

D. "Producer" means a person owning at least 100 rams, ewes, or lambs.

E. "Registered producers" means producers who have indicated that they want to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

F. "Handler" means an individual or an organization engaged in the merchandising of sheep or sheep products.

R65-11-3. Board.

A. The Utah Sheep Board is hereby established consisting of five members of the sheep industry, plus ex-officio non-voting members from BYU and USU and the Utah Department of Agriculture and Food.

B. The original members of the Board shall be selected by the commissioner from a list submitted by the industry.

C. Successors to original members shall be appointed by the commissioner from names submitted by the industry. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more that eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah sheep producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Sheep Marketing Board,

3. to conduct educational programs and advertizing to promote sheep and sheep products.

4. to conduct research projects to improve the profitability of the Utah Sheep Industry,

5. to engage in any activity to promote the Utah sheep industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least quarterly.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for the Board and members of the industry by the Utah Department of Agriculture and Food.

R65-11-4. Provisions of the Order.

A. This order provides for:

1. Uniform grading and inspection of sheep products sold or offered for sale by producers or handlers and for the establishment of grading standards of quality, conditions, and size. Such grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for sheep products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of sheep products in conformity with the regulations of the commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the Sheep Industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per pound of wool shorn to the Board annually. The discretionary assessment shall be set by majority vote of the Board, and approved by the commissioner. The initial assessment shall be 2 cents per pound. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of wool. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. The assessment of each producer shall be deducted from the producer's gross receipt by the wool purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Sheep Board. Sheep spending part of the year in Utah shall be assessed pro rata based on the time spent in Utah.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the commissioner. Copies of the audit shall be available to any contributor upon request.

4. The Board is required to reimburse the commissioner for any funds as are expended by the commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-6-5. Any funds

remaining at the end of any year over and above the necessary expenses of said Board may be divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year.

6. Any producer who wishes a refund of their paid assessment may request such by notifying the Board in writing within thirty days of payment of the assessment subject to approval of the Board.

7. The Order shall become operational only if it is approved by at least 50 percent of the producers and handlers voting in the referendum or by producers and handlers who account for at least two-thirds of the production represented by persons voting in the referendum.

R65-11-5. Division of Funds.

Assessments made and monies collected under provisions of this order shall be divided into assessments and funds for:

A. administrative purposes,

B. educational purposes, advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-11-6. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-11-7. Complaints for Violations - Producer.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-11-8. Termination of Order.

The commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-11-9. Quarterly Meeting.

The Board shall meet at least quarterly.

KEY: promotions
March 19, 1998 **4-2-2(1)(e)**
Notice of Continuation September 17, 2007

R68. Agriculture and Food, Plant Industry.
R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica).
R68-15-1. Authority.

A. Promulgated under authority of Subsection 4-2-2-(1)(j) and 4-2-2(1)(l)(ii).

B. Refer to the Notice of Quarantine, Japanese Beetle, (Popillia Japonica), Effective January 4, 1993, issued by Utah Department of Agriculture and Food.

R68-15-2. Pest.

Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

R68-15-3. Areas Under Quarantine.

A. The following states have been placed under a general quarantine to prohibit the entry of Japanese Beetle into Utah through the sale of plants and plant products: the entire states of Alabama, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

B. The same general quarantine shall apply to the following states in provinces of Canada:

1. In the Province of Ontario: Lincoln, Welland, and Wentworth.

2. In the Province of Quebec: Missiquoi and St. Jean.

C. Any areas not mentioned above where Japanese Beetle has been found or known to occur, shall also be placed under this same general quarantine.

R68-15-4. Articles and Commodities Under Quarantine.

A. The following are hereby declared to be hosts and possible carriers of all stages of the Japanese beetle:

1. Soil, humus, compost and manure (except when commercially packaged and treated);

2. All plants with roots (except bareroot plants free from soil).

3. Grass Sod;

4. Plant crowns or roots for propagation (except when free from soil);

5. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);

6. Any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

B. Packing material added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (6) above, at the inspector's discretion.

C. Free From Soil - For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.

R68-15-5. Restrictions.

All commodities covered are prohibited entry into Utah from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Utah provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. Advance notification of regulated commodity shipment is required. The certificate shall bear the name and address of the shipper and receiver as well as the inspection/certificate date and the signature of state agricultural officer. The certifying official shall mail, FAX or e-mail a copy of the certificate to Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: UDAF-Nursery@utah.gov. The shipper shall notify the receiver to hold such commodities for inspection by the Utah Department of Agriculture and Food. The receiver must notify the Utah Department of Agriculture and Food of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d) or (e) below:

(a) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply: All media must be sterilized and free of soil; All stock must be free of soil (bareroot) before planting into the approved medium; The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period; During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot gain entry. Security will be documented by the appropriate phytosanitary officials of the origin state department of agriculture and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle; The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped; Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria, and issued an appropriate certificate bearing the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse." The certificate accompanying the shipment must have the same statement as an additional declaration.

(b) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through October. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season."

(c) Applications of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official of the origin state department of agriculture or under a compliance agreement thereof. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. The phytosanitary certificate shall bear the following additional declaration: " The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Utah Japanese Beetle Quarantine."

(A) Dip Treatment - B and B and Container Plants. Not approved.

(B) Drench Treatments - Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(1) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(2) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation - Container Plants Only. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(1) Imidacloprid (Marathon 1G). Mix at the rate of five (5) pounds per cubic yard.

(2) Bifenthrin (Talstar Nursery Granular or Talstar T and O Granular (0.2)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(3) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(E) Other treatment or protocol not described herein may be submitted for review and approval to the Commissioner of Utah Department of Agriculture and Food.

(d) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Utah Department of Agriculture and Food. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

(A) Areas surveyed

(B) How survey was carried out

(C) Number of traps

(D) Results of survey

(E) History of survey

If a county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Utah if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Utah. The certificate must have the following additional declaration: " The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle.

(e) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Utah Department of Agriculture and Food for requirements: Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson @state.ut.us.

R68-15-6. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-15-4 above arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

KEY: quarantine

March 18, 1999 4-2-2

Notice of Continuation September 20, 2007 4-35-9

R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rules.
R156-26a-101. Title.

These rules are known as the "Certified Public Accountant Licensing Act Rules".

R156-26a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in these rules:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(a) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in these rules means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a peer review is to be conducted.

R156-26a-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 26a.

R156-26a-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.

R156-26a-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each college or university in Utah which has an accredited program as set forth in Section R156-26a-302a, a majority of which committee are to be licensed CPAs.

(a) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-204.

(b) The duties and responsibilities of the Education Advisory Committee shall include assisting the division in collaboration with the board in their duties, functions, and responsibilities defined in Section 58-1-202 as follows:

(i) reviewing an applicant's transcript of credits to determine satisfactory completion of the education requirements prior to approving the applicant to take the qualifying examination and advising the board as to the acceptability of an educational institution.

(c) The committee shall consider the following when advising the board of the acceptability of the educational institution:

(i) the institution's accreditation, the acceptability by other state licensing boards, faculty qualifications and other educational resources.

(2) There is created in accordance with Subsection 58-1-203(6), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs.

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

(b) The duties and responsibilities of the Peer Review Committee shall include advising the Utah Board of Accountancy on peer reviews matters and shall include:

(i) reviewing the results of peer reviews administered by approved organizations and requiring corrective action of firms with significant deficiencies noted in the review process when considered necessary in addition to those required by the administering organization;

(ii) evaluating compliance of CPE programs;

(iii) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(iv) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(v) providing technical assistance to the division; and

(vi) serving as expert witnesses at administrative hearings.

R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is accredited by the American Assembly of Collegiate Schools of Business (AACSB), or the Association of Collegiate Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a master of business administration degree which includes not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6

hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Association of Schools and Colleges, Commission on Colleges, or the North Central Association of Colleges and Schools, Commission on Institutions of Higher Education, or an equivalent accrediting institution from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The division in collaboration with the board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

(4) In accordance with Section 58-26a-306, the qualifications to sit for the AICPA examination is clarified or supplemented as follows:

(a) In accordance with Subsection 58-26a-306(1)(a), the form of application approved by the Division shall be the application that CPA Examination Services (CPAES) requires in order to sit for the examination.

(b) In accordance with Subsection 58-26a-306(1)(b), the fee shall be the fee charged by CPAES. No additional fee shall be due to the Division.

(c) In accordance with Subsections 58-26a-306(1)(c) and (d), the Board has approved CPAES to make the determination of whether the applicant has met the education requirements, provided however that, if an applicant disputes the finding of CPAES, the Board shall make a final determination of whether the applicant is qualified to sit for the AICPA examination.

R156-26a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1)(g) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302d. Qualifications for Licensure - Examinations.

(1) The Division in collaboration with the board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of licensees and firms.

(a) The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies. The program shall emphasize education and may include other remedial actions

determined appropriate where a firm's work product and services do not comply with established professional standards. In the event a firm is unwilling or unable to comply with established standards, or intentionally disregards professional standards so as to warrant disciplinary action, the administering organization shall refer the matter to the division and shall consult with the division regarding appropriate action to protect the public interest.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Utah Board of Accountancy approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in these rules are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies will assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or

(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(d) Regulatory bodies will determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Standards for review: Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective October 5, 1998 as amended, are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Utah Board of Accountancy may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under these rules.

(6) Procedures in Case of Substandard Review, a Modified or Adverse Report or repeat findings.

(a) If an administering organization finds that a peer review was not performed in accordance with these rules or the peer review results in a modified or adverse report or in repeat findings, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under these rules, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of on-site reviews, or;

(B) results in an evaluation and report on selected engagements in the case of off-site reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm not granted approval under R156-26a-303a(8)(a) shall undergo a peer review pursuant to these rules which shall comply with R156-26a-303a(8)(a) of the multi-state firm within this state.

(c) A multi-state firm seeking approval under R156-26a-303a(8)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) Exemption.

(a) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10)(a) or (b), the Division may authorize a change in a firm's year of review.

(10) Extension.

(a) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or

nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 90 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

(1) All CPAs are required to maintain current knowledge, skills, and abilities in all areas in which they provide services in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

(a) The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable to the CPA to provide evidence of meeting the minimum CPE requirements specified under these rules.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period ending on December 31 of each odd numbered year.

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis, economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in these rules, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements

mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18). "CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under these rules, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means:

An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual

time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(A) When the pilot test was conducted.

(B) The intended participant population.

(C) How the sample was determined.

(D) Names and profiles of sample participants.

(E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the division, the board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual

holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the division, within 60 days of receiving notification by the division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

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

R156-26a-305. Use of Certified Public Accountant (CPA) Title.

An individual who has a current CPA license issued by any other state may use the title or designation "Certified Public Accountant" but may only practice public accountancy in the state of Utah if currently licensed in the state of Utah or if performing public accountancy which is incidental to regular practice in another state as defined in Subsection 58-26a-305(1) and as further clarified in R156-26a-102(4).

R156-26a-307. Reinstatement of Licenses.

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted January 12, 1998, as amended, January 14, 1992 and October 28, 1997, which is hereby incorporated by reference.

KEY: accountants, licensing, peer review, continuing professional education

June 21, 2005	**58-26a-101**
Notice of Continuation February 1, 2007	**58-1-106(1)(a)**
	58-1-202(1)(a)

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

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

R156-31b-102. Definitions.

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

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

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

(3) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.

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

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

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

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2006-2007 edition, published by the American Council on Education.

(5) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "Directory of Accredited Nursing Programs", 2006-2007, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

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

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

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

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

(10) "Comprehensive nursing assessment", as used in Section R156-31b-704, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient/client conditions as well as emergent changes in patient's/client's health status; recognizing alterations to previous patient/client conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's/client's condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(11) "Contact hour" means 60 minutes.

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

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

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

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

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

(15) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(16) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

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

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

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

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

(21) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;
(b) certified nurse midwife;
(c) chiropractic physician;
(d) dentist;
(e) osteopathic physician;
(f) physician assistant;
(g) podiatric physician;
(h) optometrist;
(i) naturopathic physician; or
(j) mental health therapist as defined in Subsection 58-60-102(5).

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

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

(24) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(25) "RN" means a registered nurse.

(26) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by

the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

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

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

R156-31b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 31b.

R156-31b-104. Organization - Relationship to Rule R156-1.

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

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

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

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

(2) one licensed practical nurse; and

(3) two advanced practice registered nurses.

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

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Psychiatric Mental Health Nursing Peer Committee and the Nursing Education Peer Committee.

(2) Psychiatric Mental Health Nursing Peer Committee.

(a) The duties and responsibilities of the Psychiatric Mental Health Nursing Peer Committee are to:

(i) review applications for licensure as an APRN specializing in psychiatric mental health nursing when appropriate; and

(ii) advise the board and division regarding practice issues.

(b) The composition of the Psychiatric Mental Health Nursing Peer Committee shall be:

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

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

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

(3) Nursing Education Peer Committee.

(a) The duties and responsibilities of the Nursing Education Peer Committee are to:

(i) review applications for approval of nursing education programs;

(ii) advise the board and division regarding standards for approval of nursing education programs; and

(iii) assist the board and division to conduct site visits of nursing education programs.

(b) The composition of the Nursing Education Peer Committee shall be:

(i) five RNs or APRNs actively involved in nursing education; and

(ii) members of the board may also serve on this committee.

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

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

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

In accordance with Sections 58-31b-302(2)(e) and 58-31b-303, the education requirements for licensure are defined as follows:

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

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

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

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

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

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

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

(b) The remaining 3,000 hours shall:

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

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

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

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

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

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

(4) Duties and responsibilities of a supervisor include:

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

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

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing in psychiatric mental health nursing under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(4)(g) by demonstrating that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with the applicant's educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

(H) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(I) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(J) Psychiatric and Mental Health Nurse Practitioner (Adult and Family);

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the Oncology Nursing Certification Corporation Advanced Oncology Certified Nurse if taken on or before July 1, 2005;

(vi) the Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care; or

(vii) the Advanced Critical Care Examination administered by the American Association of Critical Care Nurses; or

(viii) the national certifying examination administered by the American Midwifery Certification Board, Inc.; or

(ix) the examination of the Council on Certification of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.

R156-31b-302d. Qualifications for Licensure - Criminal Background Checks.

(1) In accordance with Subsection 58-31b-302(5), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:

(a) a visa issued within six months of making application to Utah; or

(b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application to Utah.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

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

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) A LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; or

(ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.

R156-31b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the division may issue a temporary license to a person who meets all qualifications for licensure as either an LPN or RN, except for the passing of the required examination, if the applicant:

(a) is a graduate of or has completed a Utah-based, approved nursing education program within two months immediately preceding application for licensure;

(b) has never before taken the specific licensure examination;

(c) submits to the division evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a fully licensed registered nurse; and

(d) has registered for the appropriate NCLEX examination.

(2) The temporary license issued under Subsection (1) expires the earlier of:

(a) the date upon which the division receives notice from the examination agency that the individual failed the examination;

(b) four months from the date of issuance; or

(c) the date upon which the division issues the individual full licensure.

R156-31b-306. Inactive Licensure, Reinstatement or Relicensure.

(1) In accordance with Subsection 58-1-305(1), an individual seeking activation of an inactive RN or LPN license must document current competency to practice as a nurse as defined in Subsection (3) below.

(2) An individual seeking reinstatement of RN or LPN licensure or relicensure as a RN or LPN in accordance with Subsection R156-1-308g(3)(b), R156-1-308i(3), R156-1-308j(3) and R156-1-308k(2)(c) shall document current competence as defined in Subsection (3) below.

(3) Documentation of current competency to practice as a nurse is established as follows:

(a) an individual who has not practiced as a nurse for five years or less must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) an individual who has not practiced as a nurse for more

than five years but less than 10 years must pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure or successfully complete an approved re-entry program;

(c) an individual who has not practiced as a nurse for more than 10 years but less than 15 years must pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure and successfully complete an approved re-entry program;

(d) an individual who has not practiced as a nurse for more than 15 years shall repeat an approved nursing education program and pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure.

(4) To document current competency for activation, reinstatement or relicensure as an APRN, an individual must pass the required examinations as defined in Section R156-31b-302c and be currently certified or recertified in the specialty area.

R156-31b-307. Reinstatement of Licensure.

(1) In accordance with Section 58-1-308 and Subsection R156-1-308g(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

R156-31b-308. Exemption from Licensure.

In accordance with Subsections 58-1-307(1) and 58-31b-308(1)(a), an individual who provides up to 48 consecutive hours of respite care for a family member, with or without compensation, is exempt from licensure.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire:

(a) immediately upon failing to take the first available examination;

(b) 30 days after notification, if the applicant fails the first available examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-310. Licensure by Endorsement.

(1) In accordance with Section 58-1-302, an individual who moves from a Nurse Licensure Compact party state does not need to hold a current license, but the former home state license must have been in good standing at the time of expiration.

(2) An individual under Subsection (1) who has not been licensed or practicing nursing for three years or more is required to retake the licensure examination to demonstrate good standing within the profession.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended, may under Subsection 58-31b-401 petition the division at any time that the licensee can demonstrate that the licensee can resume competent practice.

(3) An individual who has had any license issued under Title 58, Chapter 31b revoked or surrendered two times or more as a result of unlawful or unprofessional conduct is ineligible to apply for relicensure.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Using a protected title:
initial offense: $100 - $300
subsequent offense(s): $250 - $500

(2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:
initial offense: $50 - $250
subsequent offense(s): $200 - $500

(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: $1,000 - $3,000
subsequent offense(s): $5,000 - $10,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

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

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

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

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

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

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

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

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

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

(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(15) Practicing or attempting to practice as a nurse through

gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(20) Failure to safeguard a patient's right to privacy:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(22) Engaging in sexual relations with a patient:
initial offense: $5,000 - $10,000
subsequent offense(s): $10,000
(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(27) Unlawful or inappropriate delegation of nursing care:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(28) Failure to exercise appropriate supervision:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(30) Failure to file or impeding the filing of required reports:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(31) Breach of confidentiality:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(32) Failure to pay a penalty:
Double the original penalty amount up to $10,000
(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(34) Failure to confine practice within the limits of competency:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(35) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(36) Engaging in a sexual relationship with a patient surrogate:
initial offense: $1,000 - $5,000
subsequent offense(s): $5,000 - $10,000
(37) Engaging in practice in a disruptive manner:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:
(a) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;
(b) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise provided by law;
(c) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:
(i) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;
(ii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;
(iii) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;
(d) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
(i) did not result in any form of abuse or exploitation of the surrogate or patient; and
(ii) did not adversely alter or affect in any way:
(A) the nurse's professional judgment in treating the patient;
(B) the nature of the nurse's relationship with the surrogate; or
(C) the nurse/patient relationship; and
(e) engaging in disruptive behavior in the practice of nursing.
(2) In accordance with a prescribing practitioner's order and a student care plan, a nurse who trains an unlicensed assistive personnel to administer medications under Section 53A-11-601 shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter are set forth in Sections R156-31b-601, 602, 603, and 604.
(1) Standards for programs located within Utah leading to licensure as a registered nurse or advanced practice registered nurse:
(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education, or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES),

the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT), or the Accrediting Commission of the Distance Education and Training Council (DETC);

(b) admit as students, only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(c) be legally authorized by the State of Utah to provide a program of education beyond secondary education;

(d) provide not less than a two academic year program of study that awards a minimum of an associate degree that is transferable to another institution of higher education;

(e) provide an academic program of study that awards a minimum of a master's degree that is transferable to another institution of higher education if providing education toward licensure as an advanced practice registered nurse;

(f) meet the accreditation standards of either CCNE, NLNAC, or COA as evidenced by accreditation by one of the organizations as required under Subsection R156-31b-602; and

(g) have at least 20 percent of the school's revenue from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(2) Standards for programs located within Utah leading to licensure as a licensed practical nurse:

(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education; or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES) or the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT);

(b) admit as nursing students, only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(c) be legally authorized by the State of Utah to provide a program of education beyond secondary education;

(d) provide not less than one academic year program of study that leads to a certificate or recognized educational credential and provides courses that are transferable to an institution of higher education;

(e) meet the accreditation standards of either CCNE or NLNAC as evidenced by accreditation by either organization as required under Subsection R156-31b-602.

(f) have at least 20 percent of the school's revenue from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(3) Programs located outside of Utah leading toward licensure as a nurse must be:

(a) accredited by the CCNE, NLNAC or COA; and

(b) approved by the Board of Nursing or duly recognized agency in the state in which the program is offered.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of these rules and are not accredited, must become accredited by December 31, 2005, or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for provisional approval as required in this section; and

(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) The general standards for provisional approval include:

(a) the purpose and outcomes of the nursing program shall be consistent with the Nurse Practice Act and Rules and other relevant state statutes;

(b) the purpose and outcomes of the nursing program shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;

(c) the input of consumers shall be considered in developing and evaluating the purpose and outcomes of the program;

(d) the nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(e) the curriculum shall provide diverse didactic and clinical learning experiences consistent with program outcomes;

(f) faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;

(g) the nursing program administrator shall be a professionally and academically qualified registered nurse with institutional authority and administrative responsibility for the program;

(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(i) the fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;

(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;

(k) the program must meet the criteria for nursing education programs established in Section R156-31b-601; and

(l) the nursing education program shall be an integral part of a governing academic institution accredited by an accrediting body that is recognized by the U.S. Secretary of Education.

(3) Programs which have been granted provisional approval status shall submit an annual report to the Division on the form prescribed by the Division.

(4) Programs which have been granted provisional approval prior to the effective date of these rules and are not accredited, must become accredited by December 31, 2005.

(5) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:

(a) students' achievement of program outcomes;

(b) evidence of adequate program resources including fiscal, physical, human clinical and technical learning resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;

(c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;

(d) evidence that accurate program information for consumers is readily available;

(e) the head of the academic institution and the administration support meet program outcomes;

(f) the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and

(g) evidence that the academic institution assures security of student information.

(6) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of

nursing practice consistent with the level of licensure. The curriculum shall include:

(a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;

(b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;

(c) learning experiences and methods of instruction, including distance education methods are consistent with the written curriculum plan;

(d) coursework including, but not limited to:

(i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(ii) didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in clients across the life span and in a variety of clinical settings, to include:

(A) using informatics to communicate, manage knowledge, mitigate error and support decision making;

(B) employing evidence-based practice to integrate best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing care;

(C) providing client-centered, culturally competent care:

(1) respecting client differences, values, preferences and expressed needs;

(2) involving clients in decision-making and care management;

(3) coordinating and managing continuous client care; and

(4) promoting healthy lifestyles for clients and populations;

(D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate client care and health promotion; and

(E) participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in processes of client care; and

(e) supervised clinical practice which include development of skill in making clinical judgments, management and care of groups of clients, and delegation to and supervision of other health care providers;

(i) clinical experience shall be comprised of sufficient hours to meet these standards, shall be supervised by qualified faculty and ensure students' ability to practice at an entry level;

(ii) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the division; and

(iii) all student clinical experiences, including those with preceptors, shall be directed by nursing faculty.

(7) Students rights and responsibilities:

(a) students shall be provided the opportunity to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight;

(b) all policies relevant to applicants and students shall be available in writing;

(c) students shall be required to meet the health standards and criminal background checks as required in Utah;

(d) students shall receive faculty instruction, advisement and oversight; and

(e) students shall maintain the integrity of their work.

(8) The qualifications for the administrator of a nursing education program shall include:

(a) the qualifications for an administrator in a program preparing an individual for licensure as an LPN shall include:

(i) a current, active, unencumbered RN license or multistate privilege to practice nursing in Utah;

(ii) a minimum of a masters degree in nursing or a nursing doctorate;

(iii) educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of nursing practice at the practical nurse level;

(b) the qualifications for an administrator in a program preparing an individual for licensure as an RN shall include:

(i) a current, active unencumbered RN license or multistate privilege to practice nursing in Utah;

(ii)(A) associate degree program: a minimum of a masters degree in nursing or a nursing doctorate;

(B) baccalaureate degree program: a minimum of a masters degree in nursing and an earned doctorate or a nursing doctorate;

(iii) education preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of RN practice;

(c) the qualifications for an administrator/director in a graduate program preparing an individual for licensure as an APRN shall include:

(i) a current, active unencumbered APRN license or multistate privilege to practice as an APRN in Utah;

(ii) a minimum of a masters in nursing or a nursing doctorate in an APRN specialty;

(iii) educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of APRN practice.

(9) The qualifications for faculty in a nursing education program shall include:

(a) a sufficient number of qualified faculty to meet the objectives and purposes of the nursing education program;

(b) the nursing faculty shall hold a current, active, unencumbered RN license or multistate privilege, or APRN license or multistate privilege to practice in Utah; and

(c) clinical faculty shall hold a license or privilege to practice and meet requirements in the state of the student's clinical site.

(10) The qualifications for nursing faculty who teach in a program leading to licensure as a practical nurse include:

(a) a minimum of a baccalaureate degree with a major in nursing;

(b) two years of clinical experience; and

(c) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(11) The qualifications for nursing faculty who teach in a program leading to licensure as a RN include:

(a) a minimum of a masters degree with a major in nursing or a nursing doctorate degree;

(b) two years of clinical experience; and

(c) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(12) The qualifications for nursing faculty who teach in a program leading to licensure as an APRN include:

(a) a minimum of a masters degree with a major in nursing or a nursing doctorate degree;

(b) holding a license or multistate privilege to practice as an APRN;

(c) two years of clinical experience practicing as an APRN; and

(d) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(13) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching.

(14) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(15) Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received clinical and didactic instruction in all basic areas for that course or specific learning experience. Clinical preceptors should be licensed as a nurse at or above the level for which the student is preparing.

(16) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) Each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) The curriculum shall be consistent with nationally recognized APRN roles and specialties and shall include:

(i) graduate nursing program core courses;

(ii) advanced practice nursing core courses including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(iii) coursework focusing on the APRN role and specialty.

(c) Dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties.

(d) Instructional track/major shall have a minimum of 500 hours of supervised clinical. The supervised experience shall be directly related to the knowledge and role of the specialty and category. Specialty tracks that provide care to multiple age groups and care settings will require additional hours distributed in a way that represents the populations served.

(e) There shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty. Post-masters nursing students shall complete the requirements of the masters APRN program through a formal graduate level certificate or master level track in the desired role and specialty. A program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area. Post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours.

(f) A lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or possessing a APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

R156-31b-604. Nursing Education Program Probationary Approval.

(1) The division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for provisional or full approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(2) The division may place on probationary approval status a program which implements an outreach program or satellite program without prior notification to the Division.

(3) Programs which have been granted probationary approval status shall submit an annual report to the division on the form prescribed by the division.

R156-31b-605. Nursing Education Program Notification of Change.

(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the division for approval at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct an annual survey of nursing education programs to monitor compliance with these rules. The survey may include the following:

(1) a copy of the program's annual report to a nurse accrediting body;

(2) a copy of any changes submitted to any nurse accrediting body; and

(3) a copy of any accreditation self study summary report.

R156-31b-607. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program which is located outside the state must meet to allow students to obtain clinical experiences in Utah are set forth as follows.

(1) An entry level distance learning nursing education program which leads to licensure utilizing precepted clinical experiences in Utah must meet the following criteria:

(a) parent-program must be Board of Nursing approved in the state of primary location (business), be nationally accredited by either NLNAC, CCNE, or COA, and must be affiliated with an institution of higher education;

(b) parent-program clinical faculty supervisor must be licensed in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed in good standing, in Utah or a Compact State;

(d) parent-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(e) parent-program must document compliance with the above stated criteria, along with a request to be approved to have a student who is exempt from licensure under Subsection 58-1-307(c).

(2) A nursing education program located in another state that desires to use Utah health care facilities for clinical experiences for one or more students must meet the following criteria:

(a) be approved by the home state Board of Nursing, be nationally accredited by either NLNAC or CCNE, and must be affiliated with an institution of higher education;

(b) clinical faculty must be employed by the nursing education program, meet the requirements to be a faculty member as established by the accrediting body and the program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed, in good standing, in Utah or a Compact state;

(d) have a contract with the Utah health care facilities that provide the clinical sites;

(e) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing; and

(f) document compliance with the above stated criteria, along with a request to be approved to have a student(s) who is exempt from licensure under Subsection 58-1-307(c) of the Utah Code.

(3) A distance learning didactic nursing education program with a Utah based proprietary postsecondary school which provides tutoring services, facilitates clinical site selection, and provides clinical site faculty must meet the following criteria:

(a) parent-program must be approved by the Board of Nursing in the state of primary location (business), be nationally accredited by either NLNAC or CCNE, and must be affiliated with an institution of higher education;

(b) a formal contract must be in place between the parent-program and the Utah postsecondary school;

(c) parent-program and Utah postsecondary school must submit an application for program approval by the Division of Occupational and Professional Licensing in collaboration with the Board of Nursing in Utah, utilizing the parent-program's existing curriculum. Approval is granted to the parent-program, not to the postsecondary school;

(d) clinical faculty (mentors) must be employed by the parent-program (this can be as a contractual faculty member), meet the requirements to be a faculty member as established by the accrediting body and the parent-program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(e) clinical faculty supervisor(s) located at the parent-program must be licensed, in Utah or a Compact state;

(f) parent-program is responsible for conducting the nursing education program, the program's policies and procedures, and the selection of the students;

(g) parent-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(h) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

(6) In accordance with Section 53A-11-601 and a student care plan, it is appropriate for a nurse to provide training to an unlicensed assistive personnel which includes the administration of glucagon in an emergency situation provided any training regarding the administration of glucagon is updated at least annually.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as an APRN may practice within the scope of practice of a RN under the APRN license.

(4) An individual licensed in good standing in Utah as either an APRN or a CRNA and residing in this state, may practice as an RN in any Compact state.

R156-31b-703. Generally Recognized Scope of Practice of a LPN.

In accordance with Subsection 58-31b-102(15), the LPN practicing within the generally recognized LPN scope of practice practices as follows:

(1) In demonstrating professional accountability shall:

(a) practice within the legal boundaries for practical nursing through the scope of practice authorized in statute and

rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base nursing decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accept responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the client's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a focused nursing assessment;

(b) plan for episodic nursing care;

(c) demonstrate attentiveness and provides patient/client surveillance and monitoring;

(d) assist in identification of client needs;

(e) seek clarification of orders when needed;

(f) demonstrate attentiveness and provides observation for signs, symptoms and changes in client condition;

(g) assist in the evaluation of the impact of nursing care, and contributes to the evaluation of patient/client care;

(h) recognize client characteristics that may affect the patient's/client's health status;

(i) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implement appropriate aspects of client care in a timely manner;

(i) provide assigned and delegated aspects of patient's/client's health care plan;

(ii) implement treatments and procedures; and

(iii) administer medications accurately;

(k) document care provided;

(l) communicate relevant and timely client information with other health team members including:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies;

(iii) significant changes in patient/client condition; or

(iv) patient/client needs;

(m) participate in nursing management;

(i) assign nursing activities to other LPNs;

(ii) delegate nursing activities for stable patients/clients to unlicensed assistive personnel;

(iii) observe nursing measures and provide feedback to nursing manager; and

(iv) observe and communicate outcomes of delegated and assigned activities;

(n) take preventive measures to protect patient/client, others and self;

(o) respect patient's/client's rights, concerns, decisions and dignity;

(p) promote a safe client environment;

(q) maintain appropriate professional boundaries; and

(r) assume responsibility for own decisions and actions.

(3) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respect client property and the property of others; and

(c) protect confidential information unless obligated by law to disclose the information.

R156-31b-704. Generally Recognized Scope of Practice of a RN.

In accordance with Subsection 58-31b-102(16), the RN practicing within the generally recognized RN scope of practice practices as follows:

(1) In demonstrating professional accountability shall:

(a) practice within the legal boundaries for nursing through the scope of practice authorized in statute and rules;

(b) demonstrate honesty and integrity in nursing practice;

(c) base professional decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accept responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's/client's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a comprehensive nursing assessment;

(b) detect faulty or missing patient/client information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual and social aspects of the patient's/client's condition;

(d) utilize this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's/client's overall health care plan;

(e) provide appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seek clarification of orders when needed;

(g) implement treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtain orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrate attentiveness and provides client surveillance and monitoring;

(j) identify changes in patient's/client's health status and comprehends clinical implications of patient/client signs, symptoms and changes as part of expected and unexpected patient/client course or emergent situations;

(k) evaluate the impact of nursing care, the patient's/client's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;

(l) document nursing care;

(m) intervene on behalf of patient/client when problems are identified and revises care plan as needed;

(n) recognize patient/client characteristics that may affect the patient's/client's health status; and

(o) take preventive measures to protect patient/client, others and self.

(3) In demonstrating the responsibility to act as an advocate for patient/client shall:

(a) respect the patient's/client's rights, concerns, decisions and dignity;

(b) identify patient/client needs;

(c) attend to patient/client concerns or requests;

(d) promote safe patient/client environment;

(e) communicate patient/client choices, concerns and special needs with other health team members regarding:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies; and

(iii) significant changes in patient/client condition;

(f) maintain appropriate professional boundaries;

(g) maintain patient/client confidentiality; and

(h) assume responsibility for own decisions and actions.

(4) In demonstrating the responsibility to organize, manage and supervise the practice of nursing shall:

(a) assign to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;

(b) delegate to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;

(c) match patient/client needs with personnel qualifications, available resources and appropriate supervision;

(d) communicate directions and expectations for completion of the delegated activity;

(e) supervise others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;

(f) provide follow-up on problems and intervenes when needed;

(g) evaluate the effectiveness of the delegation or assignment;

(h) intervene when problems are identified and revises plan of care as needed;

(i) retain professional accountability for nursing care as provided;

(j) promote a safe and therapeutic environment by:

(i) providing appropriate monitoring and surveillance of the care environment;

(ii) identifying unsafe care situations; and

(iii) correcting problems or referring problems to appropriate management level when needed; and

(k) teach and counsel patient/client families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.

(5) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient/client-centered health care plan;

(b) respect patient/client property, and the property of others; and

(c) protect confidential information.

(6) In being the chief administrative nurse shall:

(a) assure that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;

(b) assure that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;

(c) assure that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and

(d) assure that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.

(7) When functioning in a nursing program educator (faculty) role shall:

(a) teach current theory, principles of nursing practice and nursing management;

(b) provide content and clinical experiences for students consistent with statutes and rules;

(c) supervise students in the provision of nursing services; and

(d) evaluate student scholastic and clinical performance with expected program outcomes.

KEY: licensing, nurses

September 25, 2007	**58-31b-101**
Notice of Continuation June 2, 2003	**58-1-106(1)(a)**
	58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-102. Application Procedures.
R162-102-1. Application.

102.1.1 Initial Review - An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the State of Utah. Until January 1, 2008, an applicant may submit education documentation and experience documentation to the Division for approval separately. Effective January 1, 2008, an applicant shall submit education documentation and experience documentation to the Division at the same time.

102.1.1.1 Education documentation may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.1.1 As a prerequisite to sitting for either the licensing examination or the certification examination, the applicant shall submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.1.1.2 The applicant shall provide evidence of meeting the experience requirement by completing the form required by the Division.

102.1.1.3 The candidate shall submit the appropriate license or certification fee at the time of submission to the Division of either the education or experience documentation forms.

102.1.1.4 If an applicant has submitted education or experience documentation to the Division prior to January 1, 2008 and has obtained approval of only the education component or only the experience component required for licensure or certification, the applicant must submit proper documentation of the remaining component to the Division prior to January 1, 2011 or any approval of a component shall lapse.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance.

102.1.2.2 The candidate shall make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 Final Application

102.1.3.1 Within 90 days after successful completion of the exam, the appraiser applicant must return to the Division each of the following:

102.1.3.1.1 A report from the testing service indicating successful completion of the exam.

102.1.3.1.2 The application form required by the Division. The application form shall include the applicant's business and home addresses. A post office box without a street address is unacceptable as a business or home address. The applicant may designate either address to be used as a mailing address.

102.1.3.1.3 The fee for the federal registry if the applicant is applying for certification.

R162-102-2. Status Change.

102.2.1 A licensed or certified appraiser must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice must be made in writing on the forms required by the Division.

102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

102.2.1.2 Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

102.2.2 State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee.

102.2.2.1 Transfer to a certified category will not change the individual's expiration date.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the licensed or certified appraiser at the mailing address shown on the Division records. The applicant for renewal must return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed or certified appraiser must return proof of completion of 28 hours of continuing education taken during the preceding two years.

102.3.1.1.4 All appraisers must take the 7-hour National USPAP Update Course or its equivalent at least once every two years in order to maintain a license or certification. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license or certification shall expire.

102.3.2.1 A license or certification may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 After this 30-day period and until six months after the expiration date, the license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the expiration date, the individual continues to perform work for which a license or certification is required.

102.3.2.3 A person who does not renew a license or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application. The applicant will receive credit for previously credited prelicensing education. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser shall be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's required continuing education may submit a

timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser will have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-4. Six-Month Temporary Permits.

102.4.1 A non-resident of this state may obtain a six-month temporary permit to perform one or more specific appraisal assignments in Utah. In order to qualify for a temporary permit, the specific appraisal assignments must be covered by a contract to provide appraisals. In order to obtain a temporary permit, an applicant must:

102.4.1.1 Submit an application in writing requesting temporary licensure or certification. The application shall include the name of the client, the specific property address(es) to be appraised, the type of property being appraised, and the estimated time to complete the assignment;

102.4.1.2 Answer and submit a "Utah Appraiser Qualifying Questionnaire" in the form designated by the Division;

102.4.1.3 Sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.4.1.4 Pay an application fee in the amount established by the Division; and

102.4.1.5 Provide the starting date of the appraisal assignment for which the temporary permit is being obtained.

102.4.2 A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six month period if the assignments have not been completed within the original six-month term of the temporary permit. A temporary permit may be extended by submitting any forms required by the Division.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice. The course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

102.5.1.3 The applicant must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them;

102.5.1.4 The applicant must have passed an examination which has been approved by the AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, he must sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.5.1.6 The applicant must provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual;

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant must agree, as a condition of licensure or certification, that he will furnish to the Division upon demand all records requested by the Division relating to his appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisals, licensing
September 27, 2007 61-2b-6(1)(l)
Notice of Continuation February 15, 2007

R162. Commerce, Real Estate.
R162-104. Experience Requirement.
R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104-14, appraisal experience shall be measured in points according to the Appraisal Experience Points Schedules in Section R162-104-15 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience and a minimum of 2000 appraisal hours of experience. Applicants for certified residential shall submit proof of at least 100 additional points and 500 additional appraisal hours accrued after state-licensed status was obtained, for a total of 500 points and 2500 appraisal hours of experience. Applicants for certified general shall submit proof of at least 200 additional points and 1000 appraisal hours accrued after state-licensed status was obtained, for a total of 600 points and 3000 appraisal hours of experience.

R162-104-2. Maximum Points Per Year.

104.2 For applicants for certification, a maximum of 400 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 400 points will be credited for any one 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to substantiate the experience claimed using the form required by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements; Local Experience Requirement.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law, the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional points for certification required by Subsection R162-104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 Except for experience points claimed under Subsection R162-104.15.3, appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which includes an interior inspection of the subject property. Not more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

104.5.4 At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

R162-104-6. State-Licensed and State-Certified Applicants.

104.6.1 Except for those applicants who qualify under Section R162-104-14, applicants applying for licensure as State-Licensed Appraisers shall be awarded points from the Points Schedules in Section R162-104-15 for their experience prior to licensure only if the experience claimed was gained in compliance with Subection R162-105-3.

104.6.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule or the residential portion of the Mass Appraisal Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule or from assignments listed on the Mass Appraisal Points Schedule other than 1 to 4 unit residential properties.

104.6.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from any of the Points Schedules in Section R162-104-15, so long as at least 50% of the total points has been earned from the General Experience Points Schedule or from assignments listed on the Mass Appraisal Points Schedule other than 1 to 4 unit residential properties.

R162-104-7. Review or Supervision of Appraisals.

104.7 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following points shall be awarded for review or supervision of appraisals:

104.7.1 Review of an appraisal which includes verification of the data, but which does not include a physical inspection of the property, commonly known as a desk review, shall be worth 30% of the points awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 100 points may be earned by desk review of appraisals.

104.7.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the points awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 100 points may be earned by field review of appraisals.

104.7.3 Supervision of appraisers shall be worth 20% of the points awarded to the appraisal. A maximum of 100 points may be earned by supervision of appraisers.

104.7.4 Except as provided in Subsection R162-104.7.5, not more than 50% of the total experience required for certification may be granted under Subsections R162-104.7.1 through R162-104.7.3 and R162-104.9.1 and R162-104.9.3 combined.

104.7.5 Applicants whose experience was earned through review of appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies are not subject to the point limitations in Subsections R162-104.7.1, R162-104.7.2, and R162-104.7.4.

R162-104-8. Condemnation Appraisals.

104.8 Condemnation appraisals shall be worth an additional 50% of the points normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-9. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.9.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and

managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with Section R162-104-14, so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.9.2 Comparative market analysis by real estate licensees may be granted up to 100% experience credit toward certification in accordance with Section R162-104-14, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.9.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with Section R162-104-14 for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104.9.1 and R162-104.9.3 and R162-104.7.1 through R162-104.7.3 combined.

R162-104-10. Experience Participation.

104.10 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards, and preparation and development of the appraisal report in order to count the appraisal for experience credit. With the exception of experience claimed under Subsection R162-104.15.3, experience credit will be granted to only one licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-11. Unacceptable Experience.

104.11 An applicant will not receive points toward satisfying the experience requirement for licensure or certification for performing the following:

(a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or

(b) Personal property appraisals.

R162-104-12. Verification of Experience.

104.12 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-13. Experience Review Committee.

104.13 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.13.1 The Committee shall:

104.13.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.13.1.2 Correspond with applicants concerning submissions, if necessary; and

104.13.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.13.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and mass appraisers.

104.13.2.1 The chairperson of the committee shall be appointed by the Board.

104.13.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.13.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-14. Special Circumstances.

104.14 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedules, or applicants who believe the Experience Points Schedules do not adequately reflect their experience, or applicants who believe the Experience Points Schedules do not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may accept the alternate experience and award the applicant an appropriate number of points for the alternate experience.

104.14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Subsection R162-105.3.

R162-104-15. Appraisal Experience Points Schedules.

104.15 Points shall be awarded as follows. The point schedule in Table 1 is intended to award one experience point for every five hours of appraisal experience.

104.15.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, above-grade living area less than 4,000 square feet, including a site	1 point
(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site	1.5 points
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	
(1) 1-25 dwellings	1 point per dwelling up to a maximum of 6 points
(2) Over 25 dwellings	A total of 10 points
(c) Two to four-unit dwelling	4 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	2 points
(e) Residential lot, 1-4 unit	1 point
(f) Multiple lots in the same subdivision which are substantially similar	
(1) 1-25 lots	1 point per lot up to a maximum of 6 points
(2) Over 25 lots	A total of 10 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres as determined by the Board	4-8 points,
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than	1-7 points as determined

typical properties	by the Board
(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	2-10 points

104.15.1.1 Government Agency Experience. Applicants whose experience was earned primarily through review of residential appraisals with no opinion of value developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least the following number of one-unit dwelling appraisals conforming to USPAP Standards 1 and 2:

104.15.1.1.1 Applicants for State-Licensed Appraiser: five.

104.15.1.1.2 Applicants for State-Certified Residential Appraiser: eight.

104.15.1.2 A maximum of 50 experience points may be earned from appraisal of vacant land.

104.15.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports. The point schedule in Table 2 is intended to award one experience point for every five hours of appraisal activity. Experience points listed in Table 2 may be increased by 50% for unique and complex properties if the applicant notes the number of extra points claimed on the Appraiser Experience Log submitted by the applicant and maintains in the workfile for the appraisal an explanation about why the extra points are claimed.

TABLE 2

(a) Apartment buildings, 5-100 units	8 points
Over 100 units	10 points
(b) Hotel or motels, 50 units or fewer	6 points
51-150 units	8 points
Over 150 units	10 points
(c) Nursing home, rest home, care facilities, Fewer than 80 beds	8 points
Over 80 beds	10 points
(d) Industrial or warehouse building, Fewer than 20,000 square feet	6 points
Over 20,000 square feet, single tenant	8 points
Over 20,000 square feet, multiple tenants	10 points
(e) Office buildings Fewer than 10,000 square feet	6 points
Over 10,000 square feet, single tenant	8 points
Over 10,000 square feet, multiple tenants	10 points
(f) Entire condominium projects, using income approach to value 5- to 30-unit project	6 points
31- or more-unit project	10 points
(g) Retail buildings Fewer than 10,000 square feet	6 points
More than 10,000 square feet, single tenant	8 points
More than 10,000 square feet, multiple tenants	10 points
(h) Commercial, multi-unit, industrial, or other nonresidential use acreage 1 to 99 acres	4-8 points
100 acres or more, income approach to value	10-12 points
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	1 to 20 points as determined by Board
(j) Entire Subdivisions or Planned Unit Developments (PUDs) 1- to 25-unit subdivision or PUD	6 points
Over 25-unit subdivision or PUD	10 points
(k) Feasibility or market analysis, maximum 100 points	1 to 20 points as determined by Board

Farm and Ranch appraisals	Form	Narrative
(l) Separate grazing privileges or permits	4 pts.	5 pts.
(m) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	2 pts.	3 pts.
11-50 acres	2.5 pts.	4 pts.
51-200 acres	3 pts.	5 pts.
201-1000 acres	5 pts.	8 pts.
More than 1000 acres	8 pts.	10 pts.
(n) Dry farm, 1 to 1000 acres	3 pts.	5 pts.
More than 1000 acres	4 pts.	8 pts.
(o) Improvements on properties other than a rural residence, maximum 2 points:		
Dwelling	1 pt.	1 pt.
Sheds	0.5 pt.	0.5 pt.
(p) Cattle ranches		
0-200 head	3 pts.	4 pts.
201-500 head	5 pts.	6 pts.
501-1000 head	6 pts.	8 pts.
More than 1000 head	8 pts.	10 pts.
(q) Sheep ranches		
0-2000 head	5 pts.	6 pts.
More than 2000 head	7 pts.	9 pts.
(r) Dairies, includes all improvements except a dwelling		
1-100 head	4 pts.	5 pts.
101-300 head	5 pts.	6 pts.
More than 300 head	6 pts.	7 pts.
(s) Orchards		
5-50 acres	6 pts.	8 pts.
More than 50 acres	8 pts.	10 pts.
(t) Rangeland/timber		
0-640 acres	4 pts.	5 pts.
More than 640 acres	6 pts.	7 pts.
(u) Poultry		
0-100,000 birds	6 pts.	8 pts.
More than 100,000 birds	8 pts.	10 pts.
(v) Mink		
0-5000 cages	6 pts.	7 pts.
More than 5000 cages	8 pts.	10 pts.
(w) Fish farms	8 pts.	10 pts.
(x) Hog farms	8 pts.	10 pts.
(y) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	4-20 points	

104.15.2.1 Government Agency Experience. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through review of appraisals that are listed on Table 2 with no opinion developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.2.2 Appraisals on commercial or multi-unit form reports shall be worth 75% of the points normally awarded for the appraisal.

104.15.3 Mass Appraisal Experience Points Schedule. The point schedule in Table 3 is intended to award one experience point for every five hours of mass appraisal activity.

TABLE 3

(a) One-unit dwelling, above-grade living area less than 4,000 square feet	
(1) Exterior inspection, highest and best use analysis, data collection only	.1 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.2 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	.75 point
(b) One-unit dwelling, above-grade living area 4,000 square feet or more	
(1) Exterior inspection, highest and best use analysis, data collection only	.15 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.3 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	1 point
(c) Two to four unit dwelling	
(1) Exterior inspection, highest and best use analysis, data collection only	.3 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.6 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3 points
(d) Commercial and industrial buildings, depending on complexity	

(1) Exterior inspection, highest and best use analysis, data collection only	.2 to 1 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.4 to 2 points
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	1.5 to 7.5 points
(e) Agricultural and other improvements, depending on complexity	
(1) Exterior inspection, highest and best use analysis, data collection only	.1 to .5 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.2 to 1 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	.75 to 4 points
(f) Vacant land, depending on complexity	
(1) Inspection, highest and best use analysis, data collection only	.1 to .5 point
(2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	.5 to 5 points
(3) Land segregation (division) analysis and processing, no field inspection	.05 point
(4)Land segregation (division) analysis and processing, field inspection	.1 point
(g) Data input and review for experience points claimed under Subsections R162-104-15.3(a) through (f)	.01 point
(h) Land valuation guideline	
(1) 25 or fewer parcels	2 points
(2) 26 to 500 parcels	6 points
(3) Over 500 parcels	5 additional points for each 500 parcels, up to a maximum of 25 points
(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation	
(1) Base study of 100 reviewed sales	25 points
(2) Additional increments of 100 sales	Add 5 points for each 100 additional sales, up to a maximum of 75 points
(j) Multiple Regression Model, Development and Implementation	
(1) Less than 5,000 parcels	20 points
(2) Additional increments of 500 parcels	Add 1 point for each additional 500 parcels, up to a maximum of 75 points
(k) Depreciation study and analysis	20 points
(l) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505	
(1)Office review only	.05 point
(2) Field review	.1 point
(m) Natural Resource Properties, depending on complexity	
(1) Sand and Gravel, per site	1.5 to 4 points
(2) Mine	1.5 to 22 points
(3) Oil and Gas, per site	.33 to 10 points
(n) Pipelines and gas distribution properties, depending on complexity	2 to 8 points
(o) Telephone and electrics properties, depending on complexity	1 to 16 points
(p) Airline and railroad properties, depending on complexity	2 to 16 points
(q) Appraisal review/audit, depending on complexity	.5 to 25 points
(r) Capitalization rate study	16 points

104.15.3.1 Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers will receive the same number of points shown in Tables 1 and 2.

104.15.3.2 Review and supervision of appraisals by mass appraisers will receive points in accordance with Subsection R162-104.7.

104.15.3.3 Mass appraisers and mass appraisal trainees who perform 60% or more of the appraisal work will receive 100% of the points shown on Table 3. Mass appraisers and mass appraisal trainees who perform between 25% and 59% of the appraisal work will receive 50% of the points shown on Table 3. Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work will receive no credit for the appraisal assignment.

104.15.3.4 Applicants for State-Licensed Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified Residential Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.3.5 No more than 60% of the total points submitted for licensure or certification may have been earned from Subsections R162-104.15.3(a)(1) and (2), R162-104.15.3(b)(1) and (2), R162-104.15.3(c)(1) and (2), R162-104.15.3(d)(1) and (2), R162-104.15.3(e)(1) and (2), and R162-104.15.3(f)(1) combined.

104.15.3.6 No more than 25% of the total points submitted for licensure or certification may have been earned from Subsections R162-104.15.3(f)(3) and (4) combined.

104.15.3.7 No more than 20% of the total points submitted for licensure or certification may have been earned from Subsection R162-104.15.3(g).

104.15.3.8 Mass appraisal of property with a personal property component of less than 50% of value will be allowed the full experience points shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component of 50% to 85% of value will be allowed 50% of the experience points shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component greater than 85% will be awarded no experience points.

KEY: real estate appraisals, experience
September 27, 2007 61-2b-1 through 61-2b-40
Notice of Continuation February 15, 2007

R199. Community and Culture, Housing and Community Development.
R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.
R199-8-1. Purpose.

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 9-4-301 et seq.

R199-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by governmental entities.

Eligible applicants include state agencies and subdivisions of the state as defined in Subsection 9-4- 302(5)3, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R199-8-3. Application Requirements.

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Department of Community and Culture (DCC). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed on the next available "Application Review Meeting" agenda.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. State statute requires the Board before it grants or loans any funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants to provide the SHPO with a description of the proposed project and attach the SHPO's comments to the application. The Board also requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and the SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to

the Board on an annual basis and upon completion of the project.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" shall be "Project Review Meetings". The final meeting of each "Trimester" shall be a "Prioritization and Funding Meeting". Board meetings shall be held monthly. "Prioritization and Funding Meetings" shall be held in April for the 1st Trimester, August for the 2nd Trimester and December for the 3rd Trimester.

The deadlines for submitting applications for each of the Trimesters will no later than the following dates: 1st Trimester, December 1st; 2nd Trimester, April 1st; 3rd Trimester, August 1st.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on the next available "Project Review Meeting" agenda.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Prioritization List" for consideration at the next "Prioritization and Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants may make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of bona fide emergencies.

E. Applications for funding assistance which have been placed on the "Prioritization List" will be considered at the "Prioritization and Funding Meeting" for that Trimester. Applications which do not receive funding authorization will be held over for reconsideration at the next "Prioritization and Funding Meeting". Applications which have not received funding authorization after reconsideration will be deemed denied.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from DCC. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to PCIFB, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or DCC 's list, will not be funded by the PCIFB, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than December 1st of each year. The up- dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R-199-8-5-C, or is not in the uniform format required in R-199-8-5-E, all applications from the affected county area will be held by the Board's staff until the next funding cycle pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until the next funding cycle to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Item III-B, above.

J. Not withstanding Item III-C, above, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next funding cycle.

R199-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible us of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

R199-8-7. Procedures for Electronic Meetings.

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

B. If one or more members of the Board or one or more applicant agencies 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 CIB 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.

C. 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.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

E. When notice is given of the possibility of a member of the Board appearing electronically or telephonically, any member of the Board 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 Board. At the commencement of the meeting, or at such time as any member of the Board 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 Board who are not at the physical location of the meeting shall be confirmed by the Chair.

F. The anchor location shall be designated in the notice. 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 has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: grants
December 11, 2006 9-4-305
Notice of Continuation September 13, 2007

R199. Community and Culture, Housing and Community Development.
R199-9. Policy Concerning Enforceability and Taxability of Bonds Purchased.
R199-9-1. Enforceability.

In providing any financial assistance in the form of a loan, the (Board/Committee) representing the State of Utah (the "State") may purchase Bonds or other legal obligations (the "Bonds") of various political subdivisions (interchangeably, as appropriate, the "Issuer" or "Sponsor") of the State only if the Bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Bonds are legal and binding under applicable Utah law.

R199-9-2. Tax-Exempt Bonds.

In providing any financial assistance in the form of a loan, the (Board/Committee) may purchase either taxable or tax-exempt Bonds; provided that it shall be the general policy of the (Board/Committee) to purchase Bonds of the Issuer only if the Bonds are tax-exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the Bonds is exempt from federal income taxation. This does not apply for Bonds carrying a zero percent interest taxation. This tax opinion must be provided by the Issuer in the following circumstances:

a. When Bonds are issued and sold to the State to finance a project which will also be financed in part at any time by the proceeds of other Bonds, the interest on which is exempt from federal income taxation.

b. When (i) Bonds are issued which are no subject to the arbitrage rebate provision or Section 148 of the Internal Revenue Code of 1986 (or any successor provisions of similar intent) (the "Code"), including, without limitation, Bonds covered by the "small governmental units" exemption contained in Section 148 (f) (4) (c) of the Code, and (ii) when Bonds are issued which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of the Bonds.

Notwithstanding the above, the (Board/Committee) may purchase taxable Bonds if it determines, after evaluating all relevant circumstances including the Issuer's ability to pay, that the purchase of the taxable Bonds is in the best interests of the State and the Issuer.

R199-9-3. Parity Bonds.

In addition to the policy stated above, it is the general policy of the (Board/Committee) that Bonds purchased by the (Board/Committee) shall be full parity Bonds with other outstanding Bonds of the Issuer. Exceptions to this parity requirement may be authorized by the (Board/Committee) if the (Board/Committee) makes a determination that

(i) the revenues or other resources pledged as security for the repayment of the Bonds are adequate (in excess of 100% coverage) to secure all future payments on the Bonds and all debt having a lien superior to that of the Bonds and

(ii) the Issuer has covenanted not to issue additional Bonds having a lien superior to the Bonds owned by the (Board/Committee) without the prior written consent of the (Board/Committee), and

(iii) requiring the Issuer to issue parity bonds would cause undue stress on the financial feasibility of the project.

KEY: grants
1987 9-4-305
Notice of Continuation September 13, 2007

R199. Community and Culture, Housing and Community Development.
R199-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact.
R199-10-1. Purpose.

A. The following procedures are promulgated and adopted by the Permanent Community Impact Fund Board ("Board") of the Department of Community and Culture of the State of Utah pursuant to Section 9-4-306(4), UCA 1953 as amended.

B. In the event a project entity or a candidate ("Complainant") submits a request for determination to the Board under Section 11-13-29, UCA 1953 as amended, the Board shall hold a hearing on the questions presented. These proceedings shall be conducted informally, in accordance with the requirements of the Utah Administrative Procedure Act ("Act"), Section 63-46b-4(1), UCA 1953 as amended, unless the Board at its discretion converts the proceeding to a formal proceeding, in accordance with Section 63-46b-4(3) UCA 1953 as amended, if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

C. The only grounds available for relief are those set forth in Section 11-13-29, UCA 1953 as amended, or those reasonably inferred therefrom.

R199-10-2. Commencement of the Procedure Requesting a Determination.

A. Commencement of the procedure to request a determination from the Board shall be conducted in conformity with Section 63-46b-3(3)(a).

1. A complainant requesting a determination from the Board must submit such a request:

a. In writing;

b. Signed by the person invoking the jurisdiction of the Board or by that person's representative; and

c. Including the following information:

1. The names and addresses of all parties to whom a copy of the request for a hearing is being sent;

2. The Board's file number or other reference number;

3. The name of the adjudicative proceeding, if known;

4. The date the request for the hearing was mailed;

5. A statement of the legal authority and jurisdiction under which action by the Board is requested;

6. A statement of relief sought from the Board; and

7. A statement of facts and reasons forming the basis for relief.

B. The Complainant shall file the request for a determination with the Board and at the same time, shall serve a copy of the request upon the party complained against (the "Respondent"). The Complainant shall also mail a copy of the request to each person known to have a direct interest in the request for a determination by the Board.

C. The Respondent shall serve a response within fifteen (15) days after the request is served upon the Respondent. The Respondent may admit, deny or explain the point of view of Respondent as to each allegation in the request. Not to respond to any allegation is to admit that allegation. The Respondent may pose a counteroffer to Complainant's request for relief. Any counteroffer must be supported by reasons. Requests and responses may be directed at multiple parties.

R199-10-3. Notification of Parties.

A. The Board shall promptly give notice by mail to all parties that the hearing will be held, stating the following:

1. The Board's file number or other reference number;

2. The name of the proceedings;

3. Designate that the proceeding is to be conducted informally according to the provisions or rules enacted under Section 63-46b-4 and Section 63-46b-5, UCA 1953 as amended, with citation to Section 63-46b-4 authorizing the designation;

4. State the time and place of the scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate may be held in default; and

5. Give the name, title, mailing address and telephone number of the presiding officer for the hearing.

B. At any time twenty (20) or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms and payments. If, within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the Board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained from the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

R199-10-4. Informal Hearing Procedures.

A. Within forty (40) days after receiving a request for determination, the Board shall hold a public hearing on the questions at issue.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

D. Discovery is prohibited, and the Board may not issue subpoenas or other discovery orders.

E. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

F. Any intervention is prohibited.

G. All hearings shall be open to all parties.

H. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

I. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

J. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

K. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

L. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-5. Formal Hearing Procedures.

A. At any time prior to issuance of the final order, the Board at its discretion may convert the informal adjudicative hearing into a formal adjudicative hearing, as allowed in Section 63-46b-4(3). The procedures to be followed in such a formal adjudicative hearing are given below.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. A party may be represented by an officer or the party or by legal counsel.

D. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

E. Utah Rules of Evidence shall be in effect; however,

1. Copies of original documents may be introduced into evidence unless objected to for reasons of illegibility or tampering.

2. Hearsay will be considered for its weight but will not be conclusive in and of itself as to any matter subject to proof.

F. Discovery in formal proceedings shall be limited. Because negotiation between the parties shall have been proceeding prior to a request for determination being submitted, the Board or the administrative law judge shall assume that discovery is complete when a request is submitted. However, upon motion and sufficient cause shown, the Board or the administrative law judge may extend the period of discovery.

G. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

H. The Board or the administrative law judge may give a person not a party to the proceeding the opportunity to present oral or written statements at the hearing.

I. 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.

J. All hearings shall be open to all parties.

K. Intervention into the formal hearing will be allowed on the following basis:

1. Any person not a party may file a signed, written petition to intervene in a formal adjudicative hearing with the Board. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

a. The Board's file number or other reference number;

b. The name of the proceeding;

c. A statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative hearing, or that the petitioner qualifies as an intervenor under any provision of law; and

d. A statement of the relief the petitioner seeks from the Board.

2. The Board or the administrative law judge shall grant a petition for intervention if it determines that:

a. The petitioner's legal interests may be substantially affected by the formal adjudicative hearing; and

b. The interests of justice and the orderly and prompt conduct of the adjudicative hearing will not be materially impaired by allowing the intervention.

3. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

4. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative hearing that are necessary for a just, orderly, and prompt conduct of that hearing. Such conditions may be imposed by the Board or the administrative law judge at any time after the intervention.

L. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision based upon findings of fact and conclusions of law;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

M. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

N. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

O. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

P. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-6. Default.

A. The Board or the administrative law judge may enter an order of default against a party if that party fails to participate in the adjudicative proceedings.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

D. After issuing the order of default, the Board or the administrative law judge shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

R199-10-7. Reconsideration by the Board.

Within ten (10) days after the date that a final order is issued by the Board or the administrative law judge, any party may file a written request for reconsideration in accordance with the provisions of Section 63-46b-13, UCA 1953 as amended. Upon receipt of the request, the disposition by the Board of that written request shall be in accordance with Section 63-46b-13(3), UCA 1953 as amended. With the exception of reconsideration, all orders issued by the Board or the administrative law judge shall be final. There shall be no other review except for judicial review as provided below.

R199-10-8. Judicial Review.

An aggrieved party may also obtain judicial review of final orders issued by the Board or by the administrative law judge by filing a petition for judicial review of that order in compliance with the provisions and requirements of Section 63-46b-14 and Section 63-46b-15, UCA 1953 as amended.

KEY: impacted area programs
1988 9-4-305
Notice of Continuation September 13, 2007 11-13-29

R277. Education, Administration.
R277-101. Public Participation in Utah State Board of Education Decisions.
R277-101-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Chair" means duly elected Chairman of the Board, Vice-chair, or Chair of a Board standing committee.

R277-101-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 52-4-1 which directs that the actions of the Board be taken openly and that its deliberations be conducted openly and by 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 describe procedures to be followed by the Board in its conduct of the public's business in order to:

(1) hear from those who desire to be heard on public education matters in the state;

(2) conserve the time of the Board;

(3) enable staff to provide timely and essential information; and

(4) balance desire for public information with other demands on the Board's time.

R277-101-3. Public Participation.

A. Citizens may attend meetings of the Board.

B. Citizens may speak to the Board:

(a) to issues not on the agenda during the time designated for public comment.

(i) Priority shall be given to those individuals or groups who, prior to the meeting, have submitted a written request to address the Board, including a brief description of the issue to be addressed.

(ii) No action shall be taken by the Board on issues raised during the public comment portion of the meeting.

(iii) At the Board's discretion, a Board member may request that an item raised during public comment be placed on a future agenda for possible action.

(iv) The Chair may limit the time available for individual comments; number of comments and time limits shall be stated prior to the public comment portion of the agenda.

(v) The Chair may request groups to designate a spokesperson.

(b) to items on the agenda during the time designated for public comment, or at the discretion of and as invited by the Chair, when the item is properly before the Board or committee. The Chair may request that public comments be provided in writing.

C. All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

D. Following any presentation to the Board or one of its committees, individuals and groups may remain as spectators to the meeting.

E. Additional comments to the Board or committees may only be made as recognized and invited by the Chair.

KEY: school boards, open government
May 17, 2002 **Art X Sec 3**
Notice of Continuation September 6, 2007 **52-4-1**
53A-1-401(3)

R277. Education, Administration.
R277-103. USOE Government Records and Management Act.
R277-103-1. Definitions.

A. "USOE" means the Utah State Office of Education.

B. "GRAMA" means the Government Records and Management Act as enacted by the 1992 Utah Legislature, Sections 63-2-101 through 63-2-909.

C. "Board" means the Utah State Board of Education.

D. "Superintendent" means the State Superintendent of Public Instruction.

R277-103-2. Authority and Purpose.

A. This rule is authorized by Section 63-2-204 which allows a governmental entity to make rules regarding the entity's records and by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for appropriate access to government records.

R277-103-3. Allocation of Responsibilities Within the USOE.

Both the USOE and the Board shall be considered a single governmental entity for the purposes of this rule and the Superintendent shall be considered the head of the entity.

R277-103-4. Requests for Access.

A. Requests for access to USOE government records should be written and directed to the USOE Records Officer, 250 East 500 South, Salt Lake City, Utah 84111.

B. Response to a request submitted to persons other than the designee or not made in writing may be delayed.

C. Appeals to access determinations shall be directed to the Deputy Superintendent of Public Instruction according to time limits and provisions of Section 63-2-401.

R277-103-5. Fees.

A. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the USOE by contacting the designated Records Officer locate at 250 East 500 South, Salt Lake City, Utah 84111.

B. Payment of past fees or future estimated fees expected to exceed $50.00 or both may be required before the USOE Records Officer begins to process a request.

C. There shall be no charge made by the Board or the USOE for:

(1) inspection of records;

(2) a reasonable request that requires the segregation of records; or

(3) an inspection of the requested records to determine the requester's right to access.

D. Waiver of Fees

(1) Fees for duplication and compilation of a record may be waived under the circumstances described in Section 63-2-203(3) or other circumstances as determined by the USOE on a case by case basis, including accumulative costs of less than $2.00, for use by school districts or other entities controlled by the Board, or any affidavit from the requester claiming impecuniosity.

(2) Requests for waivers shall be made to the designated USOE Records Officer.

R277-103-6. The USOE as Custodian of District Records.

A. When the USOE acts as the custodian of local school district records and does not regularly use or access that school district's data or information, the USOE may refer requests for that information to the local school district.

B. If the USOE acts as a custodian of records, information or data for local school districts, the USOE shall request from those districts the following:

(1) Designation of what data may be provided to whom upon request;

(2) Notice of classification(s) if the data are classified; and

(3) The name and title of a school district records officer or contact person to whom the USOE shall direct requests for access to the information or records.

R277-103-7. Other Requests.

A. For Research Purposes

(1) Access to private or controlled records for research purposes is allowed by Section 63-2-202(8).

(2) Such requests shall be made to the designated Records Officer.

B. To Amend a Record

(1) An individual may contest the accuracy or completeness of a document pertaining to him owned by the USOE pursuant to Section 63-2-603.

(2) The request to amend shall be made in writing to the designated Records Officer.

(3) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act, Section 63-46b.

KEY: student records, public schools

1992	**63-2-101 through 909**
Notice of Continuation September 6, 2007	**63-2-204**
	63-46b
	53A-1-401(3)

R277. Education, Administration.
R277-112. Prohibiting Discrimination in the Public Schools.
R277-112-1. Definitions.

"Board" means the Utah State Board of Education.

R277-112-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board.

B. The purpose of this rule is to establish standards prohibiting discrimination in the public school system.

R277-112-3. Standards.

A. The Board does not advocate, permit, or practice discrimination on the basis of race, creed, color, national origin, religion, age, sex, or handicap. This rule incorporates by reference the following:

(1) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance;

(2) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance;

(3) Title IV of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000c et seq., which provides standards and training for educators relative to the desegregation of schools receiving Federal financial assistance;

(4) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., which prohibits discrimination in employment based on race, color, religion, sex, or national origin in programs and activities receiving Federal financial assistance;

(5) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance;

(6) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance;

B. The Board shall take action consistent with:

(1) all regulations, guidelines, and standards lawfully adopted under the statutes named in Subsections 3(A)(1) through (6) and effective as of July, 1993;

(2) all state laws prohibiting discrimination on the basis of race, creed, color, national origin, religion, age, sex, or handicap and effective as of July, 1993.

C. All programs, activities, schools, institutions, and school districts under the general control and supervision of the Board shall adopt policies and rules prohibiting discrimination on the basis of race, creed, color, national origin, religion, age, sex, or handicap.

KEY: educational policy, civil rights
1987 Art X Sec 3
Notice of Continuation September 6, 2007

R277. Education, Administration.
R277-115. Copyrighting Material Developed with Funds that Flow Through the Board.
R277-115-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Reprint" means a verbatim copy of the original of any material protected by copyright notices.

C. "Published" means distribution of a copy of a work by sale, lease, rental, lending, or other transfer of ownership or the offering to distribute copies to anyone for purposes of further distribution.

D. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

E. "Formula grant basis" means federal or state funds that are distributed through the Board on the basis of a formula without competitive application for the funds. The Board has no discretion in awarding the funds if the recipient qualifies under the formula and meets other standards of that particular program.

F. "Discretionary grant basis" means federal or state funds that are distributed by the Board on the basis of competitive application or contract.

R277-115-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify an orderly means for regulating copyrighted material.

R277-115-3. Reprints of Material Copyrighted by the Board.

A. The Board or its designee may grant permission to reprint published material of the Board that is protected by a copyright notice.

B. Requests for permission to reprint shall be submitted to the Board in writing and shall describe:

(1) the specific published material to be reprinted;

(2) the work in which the copyrighted material will appear; and

(3) the general use to be made of the work.

C. For permission for a reprint to be granted, full credit shall be given to the Board and the author either on the copyright page or section of the work or immediately preceding each use of the material covered by the permission. This credit shall appear on every copy of the work reproduced.

D. The Board may make a charge for the right to use substantial portions of published material of the Board if the use substantially enhances the marketability of the work with the potential of substantial profits to the work's author and publisher. Charges shall be negotiated between the Board and the party seeking to use Board materials on a case-by-case basis.

E. One copy of the work within which the reprinted material appears shall be sent to the Board upon its publication.

F. The Board or its designee shall develop forms and accounting procedures to carry out the purposes of this section.

R277-115-4. Copyrighting Materials.

A. In order to protect the public interest in the cost of the development, distribution, and use of original materials, a local school district may copyright any original material that it develops with formula grant basis funds.

B. The Board reserves the right to obtain copyrights for original materials developed on projects funded with discretionary grant basis funds which it controls or which it allots to others.

C. The Board may relinquish its copyright authority by written agreement. If the Board relinquishes its rights, it shall require a written agreement providing an irrevocable, nonexclusive, and royalty-free license to reproduce and publish the copyrighted materials, including the right to sublicense for all Utah school districts and state education institutions. Use of such materials under this exclusion is limited to public institutions in Utah.

KEY: copyright, educational policy
1987 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-401(3)

R277. Education, Administration.
R277-116. USOE Internal Audit Procedure.
R277-116-1. Definitions.

A. "Audit" means performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS, Comptroller General of the United States, 1988 revision which is hereby incorporated by reference, and available from the USOE Internal Auditor and at the Utah Attorney General's Office.

B. "Board" means the 15 member elected Utah State Board of Education/Utah State Board for Applied Technology Education.

C. "Yellow Book Standards" means the auditing standards outlined in the GOVERNMENT AUDITING STANDARDS (complete citation above).

D. "Internal Auditor" means the Board's Internal Auditor who is direct staff, has a personal and confidential relationship to the Board, and who is appointed by the Board for the purpose of conducting performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS. The Internal Auditor may conduct other auditing assignments as directed by the Board. The Internal Auditor cooperates and coordinates with the Audit Committee. The Internal Auditor's performance is evaluated by the Board or a committee of Board members.

E. "Audit Committee" means the audit committee of the Board composed of the Chairman, Vice Chairman and three Standing Committee Chairs of the Board given the responsibility to determine the relative importance of audit requests, receive reports from the internal auditor, and release audit reports to Board members and other interested parties.

F. "USOE" means the Utah State Office of Education.

G. "LEA" means any local education agency under the supervision of the Board including local school districts, regional service centers, area technology centers and vocational programs.

R277-116-2. 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, Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(f) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts and by Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

R277-116-3. Audit Committee Responsibilities.

The Audit Committee shall:

A. determine the priority for audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;

B. distribute drafts or preliminary versions of audits only to other Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee and the auditee are drafts and, as such, are not public records;

C. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;

D. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board.

R277-116-4. Internal Auditor Authority and Responsibilities.

A. The Internal Auditor reports directly to and is responsible solely to the Board, in cooperation with the Audit Committee.

B. The Internal Auditor shall conduct audits as may be recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

C. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board.

D. The Internal Auditor shall notify the Audit Committee and the Board in a timely manner of any irregularity or serious deficiency discovered in the audit process.

E. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.

F. The Internal Auditor shall review, upon the Board's direction, the implementation of recommendations or alternative actions taken as a result of an audit.

R277-116-5. Scope of Internal Audits.

A. An audit conducted by the Internal Auditor may include any or all of the following:

(1) an examination of any Board-supervised program or entity records or financial books to determine the accuracy and completeness of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly and professionally record the acquisition, custody, and use of public funds;

(2) an examination to determine whether program or entity administrators and staff have adhered to state law and Board rules;

(3) an examination to determine if operations of a program or entity have been accomplished lawfully and efficiently; and

(4) an examination to determine whether management control and information systems are adequate to guarantee compliance with the law and Board rules.

KEY: educational administration

June 17, 1998	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-1-401(3)**
	53A-1-401(4)
	53A-1-405
	53A-1-402(1)(f)
	53A-17a-147(2)

R277. Education, Administration.
R277-400. School Emergency Response Plans.
R277-400-1. Definitions.

A. "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance which could reasonably endanger the safety of school children or disrupt the operation of the school.

B. "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect district property, or regulate the operation of schools during an emergency occurring within a district or a school.

C. "Board" means the Utah State Board of Education.

D. "Emergency Response Plan" means a plan developed by a school district or school to prepare and protect students and staff in the event of school violence emergencies.

R277-400-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(1)(b) directs the Board to adopt rules for student health and safety.

B. The purpose of this rule is to establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and districts in the event of natural disasters or school violence emergencies. This rule also directs school districts to develop prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school violence emergencies.

R277-400-3. Establishing District Emergency Preparedness and Emergency Response Plans.

A. By July 1 of each year, each local board of education shall certify to the Board that its plan has been practiced at the school level, presented to and reviewed by its teachers, administrators, students and their parents, local law enforcement, and public safety representatives consistent with Section 53A-3-402(18).

B. As a part of a local board of education's annual application for Safe and Drug Free School funds, the local board shall reference its Emergency Response plan.

C. The plan(s) shall be designed to meet individual school needs and features. A district may direct schools within the district to develop and implement individual plans.

D. The local board shall appoint a committee to prepare plan(s) or modify existing plan(s) to satisfy this rule. The committee shall consist of appropriate school and community representatives which may include school and district administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. Governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels shall be included on the committee.

E. The local board shall appoint appropriate persons at least once every three years to review the plan(s).

F. The Board shall develop Emergency Response plan models under Section 53A-3-402(17)(d).

R277-400-4. Notice and Preparation.

A. A copy of the plan(s) for each school within a district shall be filed in the district superintendent's office.

B. At the beginning of each school year, parents and staff shall receive a written notice of relevant sections of district and school plans which are applicable to that school.

C. Each school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year. Community, student, teacher awareness, training, or inservice, such as those outlined in R277-400-7 and 8, would be appropriate activities offered during the week.

R277-400-5. Plan(s) Content--Educational Services and Student Supervision.

The plan shall contain measures which assure that, during an emergency, school children receive reasonably adequate educational services and supervision during school hours.

A. Evacuation procedures shall assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

B. Release of a child below ninth grade at other than regularly scheduled hours is prohibited unless the parent or another responsible person has been notified and has assumed responsibility for the child. An older child may be released without such notification if a school official determines that the child is reasonably responsible and notification is not practicable.

C. School districts shall, to the extent reasonably possible, provide educational services to school children whose regular school program has been disrupted by an extended emergency.

R277-400-6. Emergency Preparedness Training.

The plan shall contain measures which assure that school children receive emergency preparedness training.

A. School children shall be provided with training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

B. Fire drills:

(1) During each school year, elementary schools shall conduct fire drills at least once each month during school sessions. A fire drill in secondary schools shall be conducted at least every two months, for a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year for both elementary and secondary schools. An exception may be made, subject to the approval of the local fire chief, to postpone a fire drill due to severe weather conditions.

(2) Fire drills shall include the complete evacuation of all persons from the school building or portion thereof used for educational purposes. An exception may be made for the staff member responsible for notifying the local fire department and handling emergency communications.

(3) When required by the local fire chief, the local fire department shall be notified prior to each drill.

(4) When a fire alarm system is provided, fire drills shall be initiated by activation of the fire alarm system.

C. Schools shall hold at least one drill for other emergencies during the school year.

D. Resources and materials available for training shall be identified in the plan.

R277-400-7. Emergency Response Training.

A. Each district shall provide an annual inservice for district and school building staff on employees roles, responsibilities and priorities in the emergency response plan.

B. Districts shall require schools to conduct at least one annual drill for school violence emergencies.

C. Districts shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

D. Districts shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

E. Districts and schools shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

A. Districts shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

B. Districts shall also develop, to the extent resources permit, student assistance programs such as care teams, school intervention programs, and interagency case management teams.

C. In developing student assistance programs, districts are encouraged to coordinate with and seek support from other state agencies and the Utah State Office of Education.

R277-400-9. Cooperation With Governmental Entities.

A. As appropriate, a local board may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. A school district shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services. The plan(s) shall contain procedures for assessing and providing district facilities, equipment, and personnel to meet public emergency needs.

C. The plan(s) shall delineate communication channels and lines of authority within the district, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one district or state or federal aid;

(2) the local board, through its superintendent, is the chief officer for district emergencies;

(3) direction and control of emergency operations shall be exercised by the executive heads of government and school districts. Local governments and school districts retain their autonomy and identity throughout all levels of emergency operations;

(4) personnel and resources received from outside sources shall be incorporated into the structure of the local government and school district.

R277-400-10. Fiscal Procedures.

The plan(s) shall address procedures for recording district funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

KEY: emergency preparedness, disasters, safety, safety education

August 1, 2000 **Art X Sec 3**
Notice of Continuation September 6, 2007 **53A-1-401(3)**
53A-1-402(1)(b)

R277. Education, Administration.
R277-401. Child Abuse-Neglect Reporting by Education Personnel.
R277-401-1. Definitions.

A. This rule uses the definition of neglected child found in Section 78-3a-103(1)(q).

B. This rule uses the definition of abused child found in Section 78-3a-103(1)(a).

C. "Board" means the Utah State Board of Education.

R277-401-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board 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 clarify:

(1) the Board's support of early intervention in the child abuse-abuser cycle and of taking early protective measures. The daily contact of education personnel with children places them in an ideal position for identifying and referring suspected cases of abuse.

(2) the role of school employees in reporting and participating in investigations of suspected child abuse as required by Section 62A-4a-403.

R277-401-3. Procedures.

A. Any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS).

B. It is not the responsibility of school employees to prove that the child has been abused or neglected, or determine whether the child is in need of protection. Investigations are the responsibility of the Division of Child and Family Services. Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reasonable belief that a reportable problem exists.

C. School officials shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect, assisting as asked as members of interdisciplinary child protection teams in providing protective, diagnostic, assessment, treatment, and coordination services.

D. Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

E. District policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner required by Section 62A-4a-412.

F. A district policy may direct a school employee to notify the building principal of the neglect or abuse. Such a report to a principal, supervisor, school nurse or psychologist does not satisfy the employee's personal duty to report to law enforcement or DFS.

KEY: child abuse, incest, faculty, students
1987 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-401(3)

R277. Education, Administration.
R277-407. School Fees.
R277-407-1. Definitions.

A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.

B. Provision in Lieu of Fee Waiver: An alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

C. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

D. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

E. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.

F. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-2. Authority and Purpose.

A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(1) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994. This rule is also consistent with the Permanent Injunction, Doe v. Utah State Board of Education, Civil No. 920903376.

B. The purpose of this rule is:

(1) to permit the orderly establishment of a reasonable system of fees;

(2) to provide adequate notice to students and families of fee and fee waiver requirements; and

(3) to prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

R277-407-3. Classes and Activities During the Regular School Day.

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

C. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.

D. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

E. Student supplies must be provided for elementary students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

F. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

R277-407-4. School Activities Outside of the Regular School Day.

A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

B. Fees related to extracurricular activities may not exceed limits established by the local board. Schools shall collect these fees consistent with local board policies and state law.

R277-407-5. General Provisions.

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the local board of education and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire district shall be adopted at least once each year by the local board of education in a regularly scheduled public meeting of the local board. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of local board meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the local board of education and made available upon request.

C. Each local board shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the district receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each local board's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

F. Donations or contributions may be solicited and accepted in accordance with local board policies, but all such

requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student is required to make a donation in order to participate in an activity.

G. In the collection of school fees, local boards shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

R277-407-6. Waivers.

A. A local board of education shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The local board fee waiver policy shall include procedures to ensure that:

(1) at least one person at an appropriate administrative level is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question; fee waivers shall be verified by a school or school district administrator consistent with requirements of Section 53A-12-103(5);

(5) the local board requires documentation of fee waivers consistent with Section 53A-12-103(5);

(6) schools and the local board submit fee waiver compliance forms consistent with Doe v. Utah State Board of Education, Civil No. 920903376 that affirm compliance with provisions of the Permanent Injunction and provisions of Section 53A-12-103(5);

(7) the local board does not retain required fee waiver verification documentation for protection of privacy and confidentiality of family income records consistent with 53A-12-103(6);

(8) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(9) parents are given the opportunity to review proposed alternatives to fee waivers;

(10) a timely appeal process is available, including the opportunity to appeal to the local board or its designee;

(11) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(12) the local board provides for balancing of financial inequities among district schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.

B. Eligibility

(1) Inability to pay is presumed for those who are in state custody or foster care, or receiving public assistance in the form of Aid to Families with Dependent Children, or Supplemental Security Income, or are eligible for free school lunch.

(2) CASE BY CASE DETERMINATIONS SHALL BE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee.

C. No Child Nutrition Program funds may be used to administer the fee waiver program or fee waiver verification.

D. Expenditures for uniforms, costumes, clothing, and accessories (other than items of typical student dress) which are required for school attendance, participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the local board of education, and are subject to the provisions of this section, consistent with Doe v. Utah State Board of Education, Civil No. 920903376, p. 43.

E. The requirements of fee waiver and availability of other provisions in lieu of fee waiver do not apply to charges assessed pursuant to a student's damaging or losing school property. Schools may pursue reasonable methods for obtaining payment for such charges, but may not exclude students from school or withhold UNOFFICIAL transcripts or diplomas to obtain payment of those charges, consistent with Section 53A-11-806(2), and the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USC 1232g, which regulation is hereby incorporated by reference within this rule.

F. Charges for class rings, letter jackets, school photos, school yearbooks, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

R277-407-7. Fee Waiver Reporting Requirements.

Beginning with fiscal year 1990-91, each school district shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

(1) a summary of the number of students in the district given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the district;

(2) a copy of the local board's fee and fee waiver policies;

(3) a copy of the local board's fee schedule for students; and

(4) the notice of fee waiver criteria provided by the district to a student's parent or guardian.

(5) consistent fee waiver compliance forms provided by the USOE and required by Doe v. Utah State Board of Education, Civil No. 920903376.

KEY: education, educational tuition, education finance
August 23, 2005 Art X Sec 3
Notice of Continuation September 6,2 007 53A-12-102
53A-12-201
53A-12-204
53A-11-806(2)
Doe v. Utah State Board of Education, Civil No. 920903376

R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-1. Definitions.

A. "Accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

B. "Board" means the Utah State Board of Education.

C. "Elementary school" for the purpose of this rule means grades K-6 in whatever kind of school the grade levels exists.

D. "Middle school" for the purpose of this rule means grades 7-8 in whatever kind of school the grade levels exist.

E. "Northwest" means the Northwest Association of Accredited Schools, the regional accrediting association of which Utah is a member.

F. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

G. "USOE" means the Utah State Office of Education.

R277-410-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c)(i) 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 specify accreditation procedures and responsibility for public schools for which accreditation is required and for nonpublic schools which voluntarily request Northwest accreditation.

R277-410-3. Accreditation of Public Schools.

A. The USOE has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. Utah public secondary schools, as defined in R277-410-1F, including charter schools, shall be members of Northwest and be accredited by Northwest, except as exempted by R277-412-3C and R277-413-3K.

C. Utah public elementary and middle schools, as defined in R277-410-1C and D, including charter schools, that desire accreditation shall be members of Northwest and meet the requirements of R277-413. Northwest accreditation is optional for Utah elementary and middle schools.

D. All Northwest accredited schools shall complete the annual accreditation report and file the report in accordance with USOE procedures.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

R277-410-4. Transfer or Acceptance of Credit.

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

KEY: accreditation, public schools, nonpublic schools
August 8, 2006 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-402(1)(c)
53A-1-401(3)

R277. Education, Administration.
R277-411. Elementary School Accreditation.
R277-411-1. 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. "Board" means the Utah State Board of Education.

C. "Elementary school" for the purpose of this rule means grades K-6 in whatever kind of school the grade levels exists.

D. "Northwest" means the Northwest Association of Accredited Schools, the regional accrediting association of which Utah is a member.

E. "USOE" means the Utah State Office of Education.

R277-411-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by 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 elementary schools may become accredited by Northwest, the USOE, and the Board; and

(2) establish an accreditation program of appropriate and high standards of attainment to assist schools in maintaining and improving education programs.

R277-411-3. Elementary School Accreditation.

A. Elementary schools desiring accreditation shall be members of Northwest and meet the standards required for such accreditation as outlined in R277-413.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to Northwest for accreditation.

C. Accreditation shall take place under the direction of the USOE acting as an agent for Northwest.

D. The accreditation status and date of most recent accreditation of the school shall be available from the USOE upon request.

KEY: accreditation
April 1, 2005 **Art X Sec 3**
Notice of Continuation September 6, 2007 **53A-1-402(1)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-412. Junior High and Middle School Accreditation.
R277-412-1. 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. "Board" means the Utah State Board of Education.

C. "Junior high school" for the purpose of this rule means any combination of grades 7-9.

D. "Middle school" for the purpose of this rule means grades 7-8 in whatever kind of school the grade levels exist.

E. "Northwest" means the Northwest Association of Accredited Schools, the regional accrediting association of which Utah is a member.

F. "USOE" means the Utah State Office of Education.

R277-412-2. 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 specify the standards and procedures by which junior high and middle schools may choose to become accredited by Northwest with facilitation by the Board.

R277-412-3. Middle School Accreditation.

A. The accreditation process for junior high and middle schools shall take place under the direction of the USOE acting as an agent for Northwest.

B. Middle schools, which desire accreditation, shall be members of Northwest and meet all the requirements and standards outlined in R277-413. They may apply for accreditation through Northwest.

C. Public junior high and middle schools that include 9th grade shall be visited and assigned status by the USOE using the Northwest accreditation standards. The schools are not required, however, to be members of Northwest or file annual reports.

D. The Northwest accreditation standards provided in R277-413 are applicable to junior high and middle schools in their entirety if the schools include 9th grade consistent with R277-412-3C.

E. The accreditation status and date of most recent accreditation of the school shall be available from the USOE upon request.

KEY: accreditation
April 1, 2005 **Art X Sec 3**
Notice of Continuation September 6, 2007 **53A-1-402(1)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-433. Disposal of Textbooks in the Public Schools.
R277-433-1. Definitions.

A. "Textbook" means any book, workbook, or materials similar in function which are required for participation in a course of instruction. The term also includes texts approved for pilot or trial use by the State Textbook Commission or books used in classes for which textbooks are generally not adopted at the state level.

B. "Useable textbooks" means a set of at least 25 textbooks, as defined above, that are not badly damaged, worn out or outdated.

C. "USOE" means the Utah State Office of Education

R277-433-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public school system under the Board and by Section 53A-12-207, U.C.A. 1953, which requires the USOE to make rules providing for the disposal or reuse of textbooks in the public schools.

B. The purpose of this rule is to facilitate the reuse or disposal of textbooks in the public schools.

R277-433-3. Disposal Procedure.

A. Public school districts shall notify the USOE in writing by April 1 of each year of their intent to dispose of useable textbooks.

B. The USOE shall compile and distribute to all public school districts a list of available useable textbooks by June 1 of each year.

C. A school district or a school that desires to obtain books from another school district shall notify the district that owns the books within four months of the publication and distribution of the books-available list.

D. Schools and school districts are responsible for negotiating the exchange of the books.

R277-433-4. Final Disposal of Textbooks.

If a school district does not receive timely notice, as defined above, of another district's interest in available books, the local district may dispose of the books consistent with district policy.

KEY: textbooks
1991 Art X Sec 3
Notice of Continuation September 6, 2007 53A-12-207

R277. Education, Administration.
R277-445. Classifying Small Schools as Necessarily Existent.
R277-445-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

C. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive.

D. "Superintendent" means the State Superintendent of Public Instruction.

E. "ADM" means average daily membership.

R277-445-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution 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-109(2) which directs the Board to adopt standards to classify schools as necessarily existent small rural schools.

B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

R277-445-3. Standards.

A. A school may be classified as necessarily existent if it meets the following standards:

(1) the average daily membership for the school does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or

(b) 300 for one or two-year secondary schools; or

(c) 450 for three-year secondary schools; or

(d) 550 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes from the school to the nearest school within the district of the same type requires:

(a) students in kindergarten through grade six to travel more than 45 minutes;

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:

(a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;

(b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;

(c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or 3(A)(4) below.

(4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.

(a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.

(b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.

(c) An increase in the school's ADM shall be 80 percent of the projected annual increase. If the assessment for the first or second year shows the increase in the ADM is less than 80 percent, the school shall no longer be classified as necessarily existent;

(6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(a) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the USOE after consultation with the district; or

(b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.

(c) schools qualifying under standard (b) above shall be evaluated every five years.

(7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.

B. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must supplement and not supplant other funds allocated to special schools by the local board of education.

C. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

KEY: school enrollment, educational facilities
September 1, 2000 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-401(3)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "Board" means the Utah State Board of Education.

C. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or 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 and who is employed by a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1G.

D. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

E. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

F. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

G. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (1-8), Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, and may also bear endorsements relating to subjects or specific assignments.

H. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

I. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

J. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

K. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval.

A. The Board shall accept educator license recommendations from NCATE accredited, TEAC accredited or competency-based regionally accredited organizations.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(1) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) Employing school districts and educator preparation institutions shall cooperate in making special assistance available for educator Level 1 license holders. The resources of both may be used to assist those educators experiencing significant problems. The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the educator graduated.

(4) An educator shall satisfy requirements and criteria of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all requirements and the recommendation of the employing school district.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience and satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and before the Level 1 license expires.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.

(4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal after June 30, 2006 to remain highly qualified.

C. A Level 3 license may be issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice.

(1) It is valid for seven years unless suspended or revoked for cause by the Board.

(2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year shown on the face of the license and may be renewed any time after January

of that year. Responsibility for securing renewal of the license rests upon the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Middle (5-9);
(4) Secondary (6-12);
(5) Administrative/Supervisory;
(6) Applied Technology Education;
(7) School Counselor;
(8) School Psychologist;
(9) School Social Worker;
(10) Special Education (K-12);
(11) Preschool Special Education (Birth-Age 5)
(12) Communication Disorders.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare a SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have completed requirements for licensing but are waiting documentation of that completion. An approved Letter of Authorization is valid for a limited period of time. Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing is considered under qualified.

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement without a current license is not valid for employment purposes.

R277-502-6. School Counselor Levels of Licensure.

There are three levels of licensure for a K-12 school counselor:

A. School Counselor Professional Educator License Level 1 is a license issued:

(1) upon completion of an accredited counselor education program; or

(2) to persons applying for licensure under interstate agreements.

(3) This license is issued to counselors who are beginning their professional careers who have completed an approved 600 hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing).

B. School Counselor Professional Educator License Level 2 is:

(1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and

(2) is valid for five years.

C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:

(1) is currently enrolled in the program;

(2) has completed 30 semester hours of course work, including successful completion of a practicum; and

(3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.

(a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.

(b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to a graduate of an educator preparation program from an accredited institution of higher education in another state.

(1) The institution conducting the teacher preparation program shall be accredited by(NCATE), TEAC or one of the major regional accrediting associations.

(2) If the applicant has one or more years of previous educator experience, a Level 2 license may be issued following satisfaction of the requirements of R277-522 upon the recommendation of the employing Utah school district after at least one year.

R277-502-8. Computer-Aided Credentials of Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public and protected and private information on licensed Utah educators.

(1) Public information includes name, educational qualifications, degrees earned, and current assignment (if applicable).

(2) Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file is opened on a licensed Utah educator when:

(1) the individual's fingerprint cards are submitted to the USOE, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized school district staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration.

(3) Authorized employing school district staff may update data on work experience for the current school year only.

D. Licensed individuals may view personal data if registered with the Utah Education Network (UEN). An individual may not change or add data.

E. Individuals currently employed by public, private or parochial schools under letters of authorization are included in CACTUS. Interns may be included on CACTUS.

F. Designated individuals have access to CACTUS data:

(1) A licensed individual may view his own file.

(2) Designated USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, designated district or school staff members may access data on individuals employed by their own districts or data on licensed individuals who are not currently employed by public schools, some private and parochial schools and ATCs.

(4) Designated individuals may also view specific limited information on job applicants if the applicant has provided a school district with a Social Security Number.

R277-502-9. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and

endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs of testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing school district.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive;

(3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.

E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing
July 16, 2004 Art X Sec 3
Notice of Continuation September 6, 2007 53A-6-104
53A-1-401(3)

R277. Education, Administration.
R277-505. Administrative License Areas of Concentration and Programs.
R277-505-1. Definitions.

A. "Acceptable professional experience" means successful, full-time experience in public or accredited private or parochial schools in an area for which certification is required for employment in the public schools.

B. "Administrative license area of concentration" means the initial credential issued by the Board which permits the holder to be employed in a position which requires administration or supervision of elementary, middle, or secondary levels within the public education system.

C. "Board" means the Utah State Board of Education.

D. "District-specific educator license with an administrative license area of concentration" means an area of concentration awarded by a school district or charter school to an administrator following verification of criteria consistent with this rule.

E. "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.

F. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

G. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

H. "Outstanding professional qualifications" means a person who has completed a Bachelor's degree from an accredited institution of higher education and who has demonstrated successful managerial experience in business, government, or similar setting.

I. "USOE" means the Utah State Office of Education.

R277-505-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-6-101(1) and (2) which permit the Board to issue certificates for educators, 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 requirements for Administrative license areas of concentration, including meaningful internships; and

(2) provide standards and procedures for district-specific and charter school-specific Administrative license areas of concentration.

R277-505-3. Administrative License Area of Concentration Positions.

A. Local boards and charter schools shall determine, consistent with Sections 53A-3-301(4), 53A-6-104.5, 53A-6-110, and this rule, required licenses or letters of authorization for administrators working in various positions and settings.

B. Local boards and charter schools shall, by board policy determined in an open meeting, notify the public of required licenses or credentials for administrators in their schools.

C. Local boards and charter schools that have designated appropriate administrative requirements consistent with the law and this rule shall receive professional staff costs only for administrators licensed consistent with the policies and this rule.

D. Administrative interns currently registered for academic credit in an institution of higher education for the internship are not required to hold an Administrative license area of concentration but shall hold a Level 2 or Level 3 license.

E. The Board strongly recommends that all educators who supervise educators complete Administrative license areas of concentration programs and participate in ongoing professional development.

R277-505-4. Administrative License Area of Concentration Requirements.

A. An applicant for the Administrative license area of concentration shall have successfully completed or received all of the following:

(1) a Level 2 teaching license or equivalent from another state with area of concentration;

(2) a master's degree or more advanced degree;

(3) an education administrative program; and

(4) a Board-approved administrative test;

(5) Exceptions may be made to R277-505-4A(1)(2) or (3) by the USOE for exceptional professional experience, exceptional education accomplishments, or other noteworthy experiences or circumstances.

(6) not fewer than three years of acceptable full-time professional experience in an education-related area in a public or accredited private or parochial school. Appropriate experiences that may be substituted for up to one-half of this requirement include:

(a) alternative school or similar type professional experience;

(b) community college, trade-technical college, or other post-secondary professional experience;

(c) district-level administrative experience;

(d) headstart or preschool professional experience;

(e) college of education or state education agency professional experience; or

(f) professional experience in academic departments of colleges or universities if there has been sufficient involvement with public school programs and curriculum.

(7) a recommendation from a Utah institution whose program of preparation has been accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or one of the major regional accrediting associations as defined under R277-503-1L.

B. In addition to R277-505-4A, above, an applicant for the Administrative license area of concentration shall successfully complete an administrative internship. The internship shall:

(1) consist of a minimum of 450 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours.

(2) include a minimum of 200 of the required hours in a school setting which offers the opportunity of working with a properly licensed principal, students, faculty, classified employees, parents and patrons.

(3) include the remainder of the required internship hours in school district offices, the USOE or other USOE-approved and appropriate agencies or school settings.

(4) include the majority of the school-level supervised experience during the regular school day in concentrated blocks of a minimum of three hours each when students are

present.

(5) presume interns' involvement in extracurricular activities.

(6) include experiences at both elementary and secondary school levels.

(7) have clinical experience in a different school than where the intern may be employed as a teacher.

(8) provide opportunities for the intern to demonstrate application of knowledge and skills gained through the higher education experience in school settings, including the opportunity to:

(a) understand the school community;

(b) understand the school culture and its importance to the student;

(c) experience managing a safe, efficient learning environment;

(d) collaborate with families of diverse students;

(e) support ethics and fairness in the school setting; and

(f) participate in the larger political, social, economic, legal and cultural school context.

C. In the first year of employment as an administrator, an applicant for the Administrative license area of concentration shall complete a one school year mentoring experience established and supervised by the employing school district or charter school that includes criteria identified in R277-522-3A and B, as applied to administrators.

D. Relicensure and professional development requirements for active and non-practicing administrators shall include:

(1) for active administrators, at least 75 of the required 200 points shall focus on leadership issues to ensure that:

(a) administrators have current and effective knowledge and skills;

(b) administrators understand and can demonstrate employee corrective action directives;

(c) administrators are working to improve student achievement, teacher effectiveness and teacher retention skills; and

(d) administrators are using student data to assess student learning.

(2) for non-practicing administrators, at least 100 points of the required 200 points shall be related to school administration.

R277-505-5. District-Specific and Charter School-Specific Administrator Standards.

A. A local school board may request a district-specific educator license and Administrative license area of concentration permitting a person with outstanding professional qualifications to serve in a position for which that license or area of concentration is required, including all areas listed in R277-505-4.

B. In order to receive an educator license in a district-specific Administrative license area of concentration, a district shall make a request using a USOE-approved form.

C. The candidate shall:

(1) hold a Bachelors degree from an accredited institution of higher education.

(2) have a record of documented, demonstrated success in a managerial role.

(3) take a USOE-approved school leadership test which shall be used to inform and guide continuing professional development; and

(4) complete a one-year supervised administrative experience under the supervision of a licensed and trained administrative mentor assigned by the employing school district or charter school. The candidate shall be issued a letter of authorization by the USOE during the year of supervision.

D. At the end of the supervised year, the employing district or charter school shall request that a district or charter school-specific Administrative license area of concentration be awarded by the USOE.

E. The district-specific Administrative license area of concentration shall be valid only in the employing district/charter school for the duration of the individual's employment.

F. The completed Administrative license area of concentration shall qualify the school district or charter school to receive professional staff costs.

G. The USOE may receive and investigate, or both, complaints about district-specific or charter school-specific administrators. Investigations shall be conducted by the Utah Professional Practices Advisory Commission and action may be taken consistent with Section 53A-6-405, Denial of license, and Section 53A-6-501, Disciplinary action against educator.

H. Individuals who receive district-specific or charter school-specific administrative license areas of concentration shall be subject to professional development requirements established by local boards or charter schools.

R277-505-6. Reciprocity for Administrative Credentials.

A. An applicant for a Utah administrative area of concentration shall submit documentation of successful completion of an administrative program that meets Utah administrative requirements of R277-505-4.

B. The requirements of R277-505-4 may be satisfied, at the discretion of the USOE, by administrative experience in another state.

C. The USOE may require out-of-state applicants to pass a state-approved administrative test, if such a test is required of in-state applicants.

KEY: professional competency, teacher certification, accreditation

March 27, 2007	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-6-101(1)**
	53A-6-101(2)
	53A-1-401(3)

R277. Education, Administration.
R277-506. School Psychologists and School Social Workers Licenses and Programs.
R277-506-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.

C. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.

D. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.

E. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

F. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

G. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: student assessment and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.

H. "Temporary license" means a designation that an applicant has met all requirements of Section 3A(1), below.

I. "USOE" means the Utah State Office of Education.

R277-506-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-402(1)(a) which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the standards for obtaining licenses issued by the Board for employment in the public schools as school psychologists, and school social workers; and

(2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists and school social workers.

R277-506-3. School Psychologist.

A. An applicant for the Level 1 School Psychologist License area of concentration shall have:

(1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;

(2) demonstrated competence in the following:

(a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;

(b) directing psychological and psycho-educational assessments and intervention including all areas of exceptionality;

(c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;

(d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;

(e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;

(f) coordinating and working with community-school relations and multicultural education programs and assessment; and

(g) using and evaluating tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;

(3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and

(4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.

B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Level 1 License.

C. An applicant for the Level 2 School Psychologist License area of concentration shall:

(1) satisfy requirements for the Level 1 school psychologist License;

(2) have completed at least two years of successful experience as a school psychologist under a Level 1 School Psychologist License area of concentration or its equivalent; and

(3) have been recommended by the employing school district with consultation from a teacher education institution.

D. The school psychologist preparation program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE.

R277-506-4. School Social Workers.

A. An applicant for the Level 1 School Social Worker License area of concentration shall have:

(1) completed a Board approved program for the preparation of school social workers including a Master of Social Work degree from an accredited institution;

(2) demonstrated competence in the following:

(a) articulating the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;

(b) understanding the organization, administration, and evaluation of a school social work program;

(c) social work practice with individuals, families, and groups;

(d) developing and interpreting a social history and psycho-social assessment of the individual and the family system;

(e) analyzing family dynamics and experience in counseling and conflict management and resolution;

(f) communication and consulting skills in working with the client, the family, the school staff, and community and social agencies;

(g) understanding the teaching/learning environment;
(h) analyzing school law and child welfare issues;
(i) using social work methods to facilitate the affective domain of education and the learning process; and
(j) understanding knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.

(3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and

(4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.

B. An applicant for the Level 2-Standard School Social Worker License area of concentration shall have:

(1) completed at least three years of successful experience as a school social worker under a Level 1 School Social Worker License area of concentration or its equivalent; and

(2) been recommended by the employing school district with consultation from a teacher education institution.

C. The social worker program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in R277-506-3D.

KEY: educational program evaluations, professional competency, educator licensing
July 11, 2006 **Art X Sec 3**
Notice of Continuation September 6, 2007 **53A-1-402(1)(a)**
53A-6-103
53A-1-401(3)

R277. Education, Administration.
R277-514. Board Procedures: Sanctions for Educator Misconduct.
R277-514-1. Definitions.

In addition to terms defined in Section 53A-6-103, the following definitions apply:

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of an allegation of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Board" means the Utah State Board of Education.

C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

D. "Commission" means the Utah Professional Practices Advisory Commission.

E. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

F. "Party" means the complainant or the respondent.

G. "Recommended disposition" means a recommendation for resolution of a complaint.

H. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail to the individual's last known address or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

I. "Superintendent" means the State Superintendent of Public Instruction.

R277-514-2. 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, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 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 an appeals process for recommendations and decisions made by the Commission, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator's license for misconduct.

R277-514-3. Administrative Review by Superintendent.

A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:

(1) suspension of an educator's license for two years or more, or

(2) revocation of an educator's license,

B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.

C. The request for review shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

D. If the Superintendent finds:

(1) that procedural errors have occurred which may have violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or not the findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or direct the Executive Secretary for the Commission to take specific administrative action. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board, if necessary, for final disposition consistent with this rule.

R277-514-4. Board Procedures.

A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary for the Commission for action under R686-100.

B. Following completion of procedures provided in R686-100, if the Commission recommends that an educator's license be suspended for any period of time or revoked, the recommendation shall be forwarded to the Board for action.

C. Upon receiving a case from the Commission, the members of the Board shall review a summary of the case and may:

(1) accept the recommendation of the Commission; or

(2) review the case file, findings, conclusions, and recommended disposition of the case.

(a) If the Board finds no serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.

(b) If the Board finds serious procedural errors have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.

(c) If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.

(d) If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.

(e) If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.

D. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.

E. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.

F. The decision of the Board is final.

R277-514-5. Notification Requirements and Procedures.

A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission.

A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.

B. A local superintendent shall notify the Commission if an educator is determined, pursuant to an administrative or judicial action, to have had disciplinary action taken for or to be guilty of:

(1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or

(2) immoral behavior.

C. Failure of an educator to comply with Subsection A or B may constitute unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator surrenders a license or allows it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

KEY: disciplinary actions, professional competency, educator licensure

April 15, 2004	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-6-405**
	53A-6-307
	53A-1-401(3)

R277. Education, Administration.
R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.
R277-608-1. Definitions.

A. This rule uses the definitions of 53A-11-801.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

R277-608-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the 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-11-801 through 805 which provides guidelines for the use of reasonable and necessary physical restraint or force in educational settings.

B. The purpose of this rule is to prohibit the use of corporal punishment in the public schools of Utah.

R277-608-3. Reporting Requirements.

A. Each school district shall incorporate in the district plan submitted to the USOE annually, the prohibition of corporal punishment.

B. A district policy shall incorporate a prohibition of corporal punishment, appropriate sanctions and appeal procedures for district employees disciplined under this rule and the corresponding state statute.

R277-608-4. Special Education Exception(s) to this Rule.

Districts shall have in place, as part of their district special education plans, procedures or manuals, criteria and procedures for using appropriate behavior reduction intervention in accordance with state and federal law.

KEY: students' rights, disciplinary problems, teachers
1992 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-401(3)
53A-11-801 through 805

R277. Education, Administration.
R277-703. Centennial Scholarship for Early Graduation.
R277-703-1. Definitions.

A. "ATC" means Applied Technology Center.

B. "Board" means the Utah State Board of Education.

C. "SEOP" means student education/occupational plan.

D. "Centennial Scholarship" means the amount awarded to an early graduating student designated in Section 53A-15-102.

R277-703-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-402(1), U.C.A. 1953, which authorizes the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, Section 53A-15-101(5) and (6) which direct the Board to provide an early graduation option to students and to develop, implement and evaluate the early graduation program, and Section 53A-1-401(3), U.C.A. 1953, which authorizes the Board to adopt rules in accordance with its responsibilities.

B. This rule designates the Early Graduation Centennial Scholarship Certificate for use by public schools, allows for graduation to be flexible and appropriate to meet individual students' needs, and outlines the early graduation procedure. If a student graduates any time following the eleventh grade year and enters a Utah post-secondary institution, the school district shall receive a reimbursement designated for the public high school from which the student graduated early. The post-secondary institution shall receive an Early Graduation Centennial Scholarship Certificate signed by the high school principal entitling the early graduate to a partial tuition scholarship following the date of graduation according to the schedule established by this rule.

R277-703-3. Curriculum Options for Accelerating a Secondary School Student's Education Program.

A. A student shall complete the courses of study and credit mandated by the Board and by the local board of education.

B. Options for earning additional credit may include but are not limited to:

(1) Courses:

(a) High school summer school;

(b) High school or ATC early morning or after school classes;

(c) Courses completed at the student's own rate based on performance (the local board of education is responsible for assessment of mastery, R277-700-6);

(d) College courses numbered 101 and above from fully accredited institutions (concurrent enrollment, extension division, or continuing education classes);

(e) Local school district approved high school or college level correspondence courses;

(f) Equivalency ratio of higher education hours to high school credits: five (5) quarter or three (3) semester hours equal one (1) unit of high school credit.

(2) Demonstrated proficiency by assessment (amount of credit to be determined by the local board of education, R277-700-6):

(a) Advanced Placement Examination as approved by the local board of education;

(b) ACT or SAT scores that meet or exceed a level set by the local board of education;

(c) Utah state or district secondary end-of-course tests;

(d) Demonstrated proficiency in a subject, as assessed by the local board of education;

(e) College Level Examination Program (CLEP) tests.

(3) Approved work experience, as assessed by the local board of education.

(4) Demonstrated mastery in an experimental program that has received prior approval from the Board (local board of education seeks approval from the Board);

(5) Increased credit for courses that are combined into a time frame that ordinarily accommodates a lesser number of classes, as approved by the local board of education;

(6) Independent study: a student may be allowed credit for an independent research project or independent reading relevant to a course of study;

(7) Credit for experience gained during travel relevant to a specific course. Prior approval shall be obtained from and credit awarded by the local board of education.

R277-703-4. Early Graduation Student Education Plan.

A. In consultation with the student's parent or guardian and school advisor, each student shall indicate to the secondary principal the intent to complete early graduation at the beginning of the ninth grade year or as soon thereafter as the intent is known.

B. To be eligible for early graduation, a student shall have a current SEOP on file at the student's high school under provisions of R277-700-8.

R277-703-5. Local Education Requirements.

A. Requirements relating to semesters in membership are inapplicable to students who have been approved under Section R277-703-4 for graduation following the eleventh grade year.

B. Local academic and citizenship credit requirements for graduation which exceed Board requirements shall include provisions that permit students to graduate early.

R277-703-6. Funding Provisions.

A. A school district shall receive a payment designated for each high school from which students graduated before the end of the twelfth grade year.

B. Payment provisions:

(1) Districts shall receive payment for one-half of the designated Centennial Scholarship amount for each student reported as having graduated at the conclusion of the eleventh grade year on the S-3 report in the fiscal year following the student's graduation.

(2) Districts shall receive payment based on a percentage of the Centennial Scholarship amount for each student reported as graduating during the twelfth grade year. These students shall also be listed on the S-3 report and payment shall be made to the district designated for the schools in the fiscal year following the students' graduation. Districts shall receive payment for schools operating on the quarter or trimester system for each early graduating student according to the following schedule:

(a) End of first quarter of 12th grade year: 75 percent of one-half of the Centennial Scholarship amount;

(b) End of second quarter of 12th grade year: 50 percent of one-half of the Centennial Scholarship amount;

(c) End of third quarter of 12th grade year: 25 percent of one-half of the Centennial Scholarship amount;

(d) End of first trimester of 12th grade year: 67 percent of one-half of the Centennial Scholarship amount;

(e) End of second trimester of 12th grade year: 33 percent of one-half of the Centennial Scholarship amount.

B. A student who graduates from high school at the conclusion of the eleventh grade year or during the twelfth grade year shall be entitled to a partial tuition scholarship in the form of the Early Graduation Centennial Scholarship Certificate to be used at a Utah public college, university, community college, applied technology center, or any other

institution in Utah accredited by the Northwest Association of Schools and Colleges that offers post-secondary courses. The post-secondary institution shall complete the Early Graduation Centennial Scholarship Certificate and submit it to the Utah State Office of Education. Upon receipt of the Early Graduation Centennial Scholarship Certificate, the Utah State Office of Education shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post-secondary institution. To be eligible for the scholarship, the student must enroll in an eligible post-secondary institution within one calendar year of graduation.

(1) The student who graduates at the end of the eleventh grade year shall receive a full Centennial Scholarship.

(2) The student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the Centennial Scholarship amount.

(3) The student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the Centennial Scholarship amount.

(4) The student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the Centennial Scholarship amount.

(5) The student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the Centennial Scholarship amount.

(6) The student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the Centennial Scholarship amount.

KEY: graduation requirements, curricula
1994 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-402(1)
53A-1-401(3)
53A-15-101(5) and (6)

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 6, 2007	**53A-17a-120**
	53A-1-402(1)(c)
	53A-1-401(3)

R277. Education, Administration.
R277-720. Child Nutrition Programs.
R277-720-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

R277-720-2. 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, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(b) which directs the Board to make rules and minimum standards regarding access to programs, and by Section 53A-1-402(3) which authorizes the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify the standards and procedures for child nutrition programs administered by the Board.

R277-720-3. Standards and Procedures for Child Nutrition.

A. The Board adopts the following laws and regulations found at the Utah State Office of Education Child Nutrition Section and law libraries and hereby incorporates them by reference:

(1) the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq.;

(2) the Child Nutrition Act of 1966, 42 USC 1771, et seq.; and

(3) the Emergency Food Assistance Act, 7 USC, 7501, et seq.

B. The Board shall act in accordance with the following publications available from the USOE Child Nutrition Section:

(1) Administrative Manual, NSLP/NSBP/SMP (3 vols), 1998;

(2) Administrative Manual, CACFP (FDCH), (3 vols), 2000;

(3) Administrative Manual, Centers, (3 vols), 2001;

(4) Code of Federal Regulations, Chapter 7; and

(5) state plans and agreements which are required and submitted under applicable federal law.

R277-720-4. Programs.

The Board administers the following federal child nutrition programs:

A. National School Lunch Program;

B. School Breakfast Program;

C. Special Milk Program;

D. Child and Adult Care Food Program;

E. Summer Food Service Program for Children;

F. Food Distribution Program;

G. Nutrition Education and Training Program; and

H. At Risk After School Snack Program.

KEY: school lunch program, nutrition

January 15, 2004	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-1-401(3)**
	53A-1-402(1)(b)
	53A-1-402(3)

R277. Education, Administration.
R277-750. Education Programs for Students with Disabilities.
R277-750-1. Definitions.

"Board" means the Utah State Board of Education.

R277-750-2. 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) which directs the Board to adopt rules regarding programs for students with disabilities, Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-3. Standards and Procedures.

A. As its rules for programs for students with disabilities, the Board adopts and hereby incorporates by reference:

Education of the Handicapped Act, 20 U.S.C., Chapter 33, Section 1401 et seq. as amended by Public Law 102-119; and

B. The Board shall act in accordance with:

(1) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(2) The State Board of Education R277-750, "State Board of Education Special Education Rules," June, 2000 including the following appendices:

(a) Appendix A, Utah Specialist Education Law (UCA 53A-15-301-305),

(b) Appendix B, State Licensor Endorsements: Special Education, School Psychologist, School Social Workers, and Paraeducator qualifications Standards,

(c) Appendix C, Elementary and Secondary Program of Studies and High School Graduation Requirements,

(d) Appendix D, Coordination Council for Persons with Disabilities,

(e) Appendix E, Vocational Rehabilitation Services,

(f) Appendix F, Selection of Least Restrictive Behavioral Interventions for Use with Students with Disabilities, June, 2001; and

(3) Utah State Federal Application, as amended, for fiscal years 1993-1995, June 1992, under Part B of the Individuals with Disabilities Education Act, (20 U.S.C., Chapter 33, Section 1412) as amended by Public Law 102-119.

C. Students with disabilities shall be entitled to dual enrollment consistent with Section 53A-11-102.5 and R277-438.

KEY: special education

December 5, 2001	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-1-402(1)**
	53A-17a-111
	53A-15-301
	53A-1-401(3)

R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-1. Definitions.

A. "Aggregate membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

B. "Approved program" means a program approved by the Board that meets or exceeds the state program standards or outcomes for career and technical education programs.

C. "Board" means the Utah State Board of Education.

D. "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

E. "Career and technical education" means organized educational programs which directly or indirectly prepare individuals for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. These programs provide all students an undisrupted education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Occupational categories include agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; trade and technical education; and technology education.

F. "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

G. "Comprehensive counseling and guidance program" means the organization of resources to meet the priority needs of students through four delivery system components as outlined in R277-462.

H. "Course" means an individual career and technical education class structured by state-approved standards and CIP code. An approved course may require one or two periods for up to one year. Courses may be completed by demonstrated competencies or by course completion.

I. "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field. Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation. Competent performance of entry-level tasks enhances employability and initial productivity.

J. "Extended year program" means career and technical education programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other career and technical education funds.

K. "Program" means a combination of career and technical education courses that provides the competencies for specific job placement or continued related training and is outlined in the SEOP using all available and appropriate high school courses.

L. "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, and/or other prescribed learning experiences as determined by the student education occupation plan (SEOP).

M. "Regional consortium" means the school districts, applied technology colleges, colleges and universities within the regions that approve career and technical education programs.

N. "Registered apprenticeship" means a training program that includes on-the-job training in a specific occupation combined with related classroom training and has approval of the Bureau of Apprenticeship and Training.

O. "Related training" means a course or program directly related to an occupation that is compatible with apprenticeship training and is taught in a classroom and approved by the Bureau of Apprenticeship and Training.

P. "Scope and sequence" means the organization of all career and technical education courses and related academic courses into programs within the high school curriculum that lead to specific skill certification, job placement, continued education or training.

Q. "SEOP" means student education occupation plan. An SEOP shall include:

(1) a student's education occupation plans (grades 7-12) including job placement when appropriate;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies; and

(5) identification of post secondary goals and approved sequence of courses.

R. "Skill certification" means a verification of competent task performance. Verification of the skills standard is provided by an approved state or national program certification process.

S. "Tech prep" means a planned career and technical education/academic continuum of courses within a career and technical education field beginning in the 9th grade and continuing with post secondary training which culminates in an associate degree, apprenticeship, certificate of completion, or baccalaureate degree.

T. "USOE" means the Utah State Office of Education.

U. "WPU" means weighted pupil unit. The basic unit used to calculate the amount of state funds for which a school district is eligible.

V. "Work-based learning" means a program in which a student is trained by employment or other activity at a work site, either at place of business, a home, or a farm, supplemented by needed classroom instruction or teacher assistance.

R277-911-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-15-202 which allows the Board to establish minimum standards for career and technical education programs in the public education system, and Sections 53A-17a-113 and 114 which direct the Board to distribute specific amounts and percentages for specific career and technical education programs and facilitate administration of various programs.

B. This rule establishes standards and procedures for school districts seeking to qualify for funds administered by the Board for career and technical education programs in the public education system.

R277-911-3. Career and Technical Education Program Approval.

A. Program Planning: career and technical education programs are based on verified training needs of the area and provide students with the competencies necessary for occupational opportunities. Programs are supported by a data base, including:

(1) local, regional, state, and federal manpower projections;

(2) student occupational/interest surveys;

(3) regional job profile;

(4) advisory committee information; and

(5) follow-up evaluation and reports.

B. Program Administration: School district career and technical education directors shall meet the requirements specified in Subsections 9(A), (B) and (C).

C. Learning Resources: Within available resources,

instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the career and technical education programs.

D. Student Services provided by school districts or consortia of school districts:

(1) Career and technical education guidance, counseling, and Board approved testing shall be provided for students enrolled in career and technical education programs.

(2) A written plan for placement services shall be developed with the assistance of local advisory committees, business and industry and the Department of Workforce Services.

(3) An SEOP shall be developed for all students. The plan shall include:

(a) a student's education occupation plans (grades 7-12), including job placement when appropriate;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies;

(e) identification of a career and technical education post-secondary goal and an approved sequence of academic and career and technical education courses.

E. Instruction: Curricula and instruction shall be directly related to business and industry validated competencies. Successful completion of competencies shall be verified by a valid skill certification process. Instruction in proper and safe use of any equipment required for skill certification shall be provided within the approved program.

F. Equipment and Facilities: Equipment and facilities, consistent with the validated competencies identified in the instruction standard, shall be provided and maintained safely, consistent with applicable state and federal laws.

G. Instructional Staff: Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach. These may be obtained through an institutional recommendation or through occupational and educational experience verified by the USOE licensure process. Career and technical education program instructors shall keep technical and professional skills current through business/industry involvements in order to ensure that students are provided accurate state-of-the-art information.

H. Equal Educational Opportunity: Career and technical education programs shall be conducted consistent with the Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of race, creed, color, national origin, religion, age, sex, and disability.

I.(1) Career and technical education advisory council: An active advisory council shall be established to review all career and technical education programs annually. The council may serve several school districts or a region. The council reviews the program offerings, quality of programs, and equipment needs.

(2) Program advisory committee: Each state-funded approved occupational career and technical education program shall be supported at the school district/regional level by a program advisory committee made up of individuals who are working in the occupational area. Basic exploratory programs shall have an advisory committee.

J. Career and technical education student leadership organizations: School districts are encouraged to make this training available through nationally-chartered career and technical education student leadership organizations in each program area.

K. Program and instruction evaluation: Each school district, with oversight by local program advisory committee members, shall make an annual evaluation of its career and technical education programs.

R277-911-4. Disbursement and Expenditure of Career and Technical Education Funds--General Standards.

A. To be eligible for state career and technical education program funds, a school district shall first expend for career and technical education programs an amount equivalent to the regular WPU for students in approved career and technical education programs, grades nine through twelve, based on prior year aggregate membership, times the current year WPU value, less an amount for indirect costs as computed by the USOE.

B. State career and technical education program funds may thereafter be expended only for approved career and technical education programs.

R277-911-5. Disbursement of Funds--Added Cost Funds.

A. Weighted pupil units shall be allocated for the added instructional costs of approved career and technical education programs operated or contracted by school districts. Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

B. Computerized or manually produced records for career and technical education programs shall be kept by teacher, class, and Classification of Instructional Program (CIP) code. These records shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a career and technical education class ten consecutive days.

C. Added cost funds shall not be generated:

(1) during bus travel;

(2) until the student starts attending the approved career and technical education course;

(3) when the student has been absent, without excuse, for the previous 10 days.

D. All approved career and technical education programs shall receive funds determined by prior year hours of membership for approved programs.

E. Allocations are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to school districts experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

F. Added cost funds shall be used to cover the added career and technical education program instructional costs of school district programs.

R277-911-6. Disbursement of Funds--Equipment Set Aside Funds.

A. Equipment set aside funds shall pay for career and technical education program equipment needs.

B. Each school district is eligible for a minimum amount of equipment set aside funds.

C. Applicants for funds may submit proposals as individual school districts or as regional groups. All proposals shall show evidence of coordination within a service delivery area. A regional group shall include recommended priorities for funding in its proposal.

R277-911-7. Disbursement of Funds--Skill Certification.

A. School districts that demonstrate approved student skill certification may receive additional compensation.

B. To be eligible for skill certification compensation, a school district shall show its student completer has

demonstrated mastery of standards, as established by the Board. An authorized test administrator shall verify student mastery of the skill standards.

C. Skill certification compensation shall be available only if an approved skill certification assessment is developed for the program.

R277-911-8. Disbursement of Funds--Career and Technical Education Leadership Organization Funds.

A. Participating school districts sponsoring career and technical education leadership organizations shall be eligible for a portion of the funds set aside for this purpose.

B. Qualifying career and technical education leadership organizations shall be nationally chartered and include: SkillsUSA/VICA (Vocational Industrial Clubs of America), DECA (Distributive Education Clubs of America), FFA (Future Farmers of America), HOSA (Health Occupations Students of America), FBLA (Future Business Leaders of America), FCCLA (Family, Career and Community Leaders of America), and ITEA/TSA (International Technology Education Association/Technology Students Association).

C. Up to one percent of the state career and technical education appropriation for school districts shall be allocated to eligible school districts based on documented prior year student membership in approved career and technical education leadership organizations.

D. A portion of funds allocated to a school district for career and technical education leadership organizations shall be used to pay the school district's portion of statewide administrative and national competition costs. The remaining amount shall be available for school district career and technical education leadership organization expenses.

R277-911-9. Disbursement of Funds--School District/Charter School WPUs.

A. Twenty (20) WPUs shall be allocated to each school district or charter school for costs associated with the administration of career and technical education. To encourage multidistrict career and technical education administrative services, 25 WPUs may be allocated to each school district or charter school that consolidates career and technical education administrative services with one or more other school district/charter school.

B. To qualify for 20 or 25 WPUs per school district, the school district career and technical education director shall:

(1) hold or be in the process of completing requirements for a current Utah Administrative/Supervisory License specified in R277-505; and

(2)(a) have an endorsement in at least one career and technical area listed in R277-518, Vocational-Technical Certificates, and have four years of experience as a full-time career and technical educator; or

(b) complete a prescribed in-service program provided by the USOE within a period of two years following local board appointment as a school district career and technical education director.

B. To qualify for 25 WPUs for consolidated, multi-district administration, the participating school districts shall employ a full-time multi-district or charter school career and technical education director.

C. In addition to WPUs appropriated to school districts qualifying according to the above criteria, each approved high school may qualify for funding according to the following criteria:

(1) Ten (10) WPUs are allocated to each high school that:

(a) conducts approved programs in a minimum of two career and technical education areas e.g. agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; trade and technical education; and technology education.

(b) conducts a minimum of six different state-approved CIP coded courses. Consolidated courses in small schools may count as more than one course as approved by the appropriate state career and technical education specialist(s);

(2) Fifteen (15) WPUs shall be allocated to each high school that:

(a) conducts approved programs in a minimum of three career and technical education areas;

(b) conducts a minimum of nine different state-approved CIP coded courses. Consolidated courses in small schools may count as more than one course as approved by the appropriate state career and technical education specialist(s);

(c) has at least one approved career and technical education student leadership organization;

(3) Twenty (20) WPUs shall be allocated to each high school that:

(a) conducts approved programs in a minimum of four career and technical education areas,

(b) conducts a minimum of twelve different state-approved CIP coded courses. Consolidated courses in small schools may count more than one course as approved by the appropriate state career and technical education specialist(s),

(c) has at least two approved career and technical education student leadership organizations;

(4) Twenty-five (25) WPUs shall be allocated to each high school that:

(a) conducts approved programs in a minimum of five career and technical education areas,

(b) conducts a minimum of fifteen different state-approved CIP coded courses. Consolidated courses in small schools may count more than one course as approved by the appropriate state career and technical education specialist(s),

(c) has at least three approved career and technical education student leadership organizations.

D. Also, a maximum of one approved alternative high school, as outlined in R277-730, per school district may qualify. School districts sharing an alternative school share shall receive a prorated share.

E. Programs and courses provided through school district technical centers shall not receive funding under this section.

R277-911-10. Disbursement of Funds--School District Technical Centers.

A. A maximum of forty WPUs may be computed for each school district operating an approved school district center. To qualify under the approved school district technical center provision, the school district shall:

(1) provide at least one facility other than an existing high school as a designated school district technical center;

(2) employ a full-time career and technical education administrator for the center;

(3) enroll a minimum of 400 students in the school district technical center;

(4) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges and higher education institutions;

(5) centralize high-cost programs in the school district technical center;

(6) conduct approved programs in a minimum of five career and technical education areas;

(7) conduct a minimum of fifteen different state-approved CIP coded courses.

R277-911-11. Disbursement of Funds--Summer Career and Technical Education Agriculture Programs.

A. To receive state summer career and technical education agriculture program funds, a school district shall submit to the USOE, an application for approval of the school district's program. Applications shall be received prior to the annual due date specified each year. Notification of approval of the school district's program shall be made within ten calendar days of receiving the application.

B. A teacher of a summer career and technical education agriculture program shall:

(1) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in R277-911-3G;

(2) develop a calendar of activities which shall be approved by school district administration and reviewed by the state specialist for career and technical education agricultural education;

(3) work a minimum of eight hours a day in the summer career and technical education agriculture program. Exceptions shall be reflected in the calendar of activities and be approved by the school district administration;

(4) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer career and technical education agriculture program;

(5) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with the school principal, school district career and technical education director, and the state specialist for agricultural education; and

(6) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

C. College interns may be approved to conduct summer career and technical education agriculture programs upon approval by the state specialist for career and technical education agricultural education.

D. Students enrolled in the summer career and technical education agriculture program shall:

(1) have on file in the teacher's and school district office a student education occupation plan (SEOP) goal related to agriculture;

(2) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(3) have completed the eighth grade; and

(4) have not have graduated from high school.

E. The USOE career and technical education agricultural education specialist shall collect data from the program and staff of each school district to ensure compliance with approved standards. A final program report, on forms provided by the USOE, shall be submitted to the USOE on the annual due date specified.

F. Summer career and technical education agricultural funding shall be allocated to each school district conducting an approved program for a minimum of 35 students lasting nine weeks. A school district may receive funding for no more than nine weeks or 35 students.

G. School districts operating programs with fewer than 35 students per teacher or for fewer than nine weeks shall receive a prorated share of the summer career and technical education agricultural allocation.

R277-911-12. Disbursement of Funds - Comprehensive Guidance; Technology, Life, and Careers, and Work-Based Learning Programs.

A. The board shall distribute funds to school districts consistent with Section 53A-17a-113(2)(3)(4) and (6).

B. School districts shall spend funds distributed for comprehensive guidance consistent with Section 53A-1a-106(2)(b) and R277-462 which explain the purpose and criteria for student education plans (SEP) and student education occupation plans (SEOP).

C. School districts may spend funds allocated under this section to fund work-based learning programs consistent with Section 53A-17a-113(1)(c), other criteria of the Section, R277-915 and R277-916.

D. School districts may spend funds allocated under this section to fund technology, life, and careers programs consistent with Section 53A-17a-113 and R277-916.

KEY: technical education, career and technical education
December 11, 2006 Art X Sec 3
Notice of Continuation September 6, 2007 53A-15-202
53A-17a-113 through 115

R307. Environmental Quality, Air Quality.
R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).
R307-405-1. Purpose.

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule does not include the clean unit and pollution control project provisions that were vacated by the DC Circuit Court of Appeals on June 24, 2005. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(a)(2), effective July 1, 2006, are hereby incorporated by reference.

(2) The following provisions that apply to clean units and pollution control projects are not incorporated because these provisions were vacated by the DC Court of Appeals on June 24, 2005:

(a) 40 CFR 52.21(a)(2)(iv)(e),

(b) the last sentence in 40 CFR 52.21(a)(2)(iv)(f), and

(c) 40 CFR 52.21(a)(2)(vi).

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2)below, the definitions contained in 40 CFR 52.21(b), effective July 1, 2006, are hereby incorporated by reference.

(2) (a)(i) "Major Source Baseline Date" means:

(A) in the case of particulate matter:

(I) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;

(II) for all other areas of the State, January 6, 1975;

(B) in the case of sulfur dioxide:

(I) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;

(II) for all other areas of the State, January 6, 1975; and

(C) in the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(B) in the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

(b) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(c) "Reviewing Authority" means the executive secretary.

(d)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),

(B) 40 CFR 52.21(b)(37)(i),

(C) 40 CFR 52.21(b)(43),

(D) 40 CFR 52.21(b)(48)(ii)(c),

(E) 40 CFR 52.21(b)(50)(i),

(F) 40 CFR 52.21(l)(2),

(G) 40 CFR 52.21(p)(2), and

(H) 40 CFR 51.166(q)(2)(iv).

(e) The following definitions or portions of definitions that apply to clean units and pollution control projects are not incorporated because these provisions were vacated by the DC Court of Appeals on June 24, 2005:

(i) in the definition of "major modification" in 40 CFR 52.21(b)(2), subparagraph (iii)(h),

(ii) in the definition of "net emissions increase" in 40 CFR 52.21(b)(3), subparagraph (iii)(b),

(iii) in the definition of "net emissions increase" in 40 CFR 52.21(b)(3), subparagraph (vi)(d),

(iv) the definition of "pollution control project" in 40 CFR 52.21(b)(32), and

(v) the definition of "clean unit" in 40 CFR 52.21(b)(42).

(f) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21 (b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), effective July 1, 2006, that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP)

Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

(a) Arches National Park,

(b) Bryce Canyon National Park,

(c) Canyonlands National Park,

(d) Capitol Reef National Park, and

(e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

(3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g) effective July 1, 2006, that is hereby incorporated by reference.

R307-405-6. Ambient Air Increments.

The provisions of 40 CFR 52.21(c), effective July 1, 2006, are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.

The provisions of 40 CFR 52.21(d), effective July 1, 2006, are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

(a) impact a Class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to a violation of the national ambient air quality standards.

R307-405-9. Stack Heights.

The provisions of 40 CFR 52.21(h), effective July 1, 2006, are hereby incorporated by reference.

R307-405-10. Exemptions.

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii), effective July 1, 2006, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5), effective July 1, 2006, are hereby incorporated by reference.

R307-405-11. Control Technology Review.

The provisions of 40 CFR 52.21(j), effective July 1, 2006, are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.

The provisions of 40 CFR 52.21(k), effective July 1, 2006, are hereby incorporated by reference.

R307-405-13. Air Quality Models.

The provisions of 40 CFR 52.21(l), effective July 1, 2006, are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii), effective July 1, 2006, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3), effective July 1, 2006, are hereby incorporated by reference.

R307-405-15. Source Information.

The provisions of 40 CFR 52.21(n), effective July 1, 2006, are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.

The provisions of 40 CFR 52.21(o), effective July 1, 2006, are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.

(1) The provisions of 40 CFR 52.21(p), effective July 1, 2006, are hereby incorporated by reference.

(2) The executive secretary will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2), effective July 1, 2006, are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.

(1) Except as provided in (2) below, the provisions of 40 CFR 52.21(r), effective July 1, 2006, are hereby incorporated by reference.

(2) The parenthetical phrase in the first sentence in 40 CFR 52.21(r)(6) shall be changed to read "(other than projects at a source with a PAL)."

R307-405-20. Innovative Control Technology.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v), effective July 1, 2006, are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The executive secretary shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(aa), effective July 1, 2006, are hereby incorporated by reference.

(2)(a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "June 16, 2006".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the executive secretary must identify them in either the Utah SIP or an order. The executive secretary will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

KEY: air pollution, PSD, Class I area
September 7, 2007 19-2-104
Notice of Continuation July 13, 2007

R313. Environmental Quality, Radiation Control.
R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.
R313-16-200. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation. This rule provides for the registration of individuals providing inspection services to a facility where one or more radiation machines are installed or located.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(10).

R313-16-215. Definitions.

"Qualified expert" means an individual having the knowledge and training to measure regulatory parameters on radiation machines, to evaluate radiation safety programs, to evaluate radiation levels, and to give advice on radiation protection needs while conducting inspections of radiation machine facilities registered with the Department. Qualified experts are not considered employees or representatives of the Division of Radiation Control or the State.

"Sorting Center" means a facility in which radiation machines are in storage until they are shipped out of state.

"Storage" means a condition in which a radiation machine is not being used for an extended period of time, and has been made inoperable.

R313-16-220. Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of Rule R313-16, providing the dose equivalent rate averaged over an area of ten square centimeters does not exceed 0.5 mrem (5.0 uSv) per hour at five centimeters from accessible surfaces of the equipment.

(2) Radiation machines while in transit are exempt from the requirements of Section R313-16-230. See Section R313-16-250 for other applicable requirements.

(3) Television receivers are exempt from the requirements of Rule R313-16.

(4) Radiation machines while in the possession of a manufacturer, assembler, or a sorting center are exempt from the requirements of Section R313-16-230.

(5) Radiation machines owned by an agency of the Federal Government are exempt from the requirements of Rule R313-16.

R313-16-225. Responsibility for Radiation Safety Program.

(1) The registrant shall be ultimately responsible for radiation safety, but may designate another person to implement the radiation safety program. When, in the Executive Secretary's opinion, neither the registrant nor the registrant's designee is sufficiently qualified to insure safe use of the machine; the Executive Secretary may order the registrant to designate another individual who has adequate qualifications.

(2) The registrant or the registrant's designee shall:

(a) develop a detailed program of radiation safety that assures compliance with the applicable requirements of these rules, including Section R313-15-101;

(b) have instructions given concerning radiation hazards and radiation safety practices to individuals who may be occupationally exposed;

(c) have surveys made and other procedures carried out as required by these rules; and

(d) keep a copy of all reports, records, and written policies and procedures required by these rules.

R313-16-230. Registration of Radiation Machines.

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the Executive Secretary.

(2) Registration shall be required annually in accordance with a schedule established by the Executive Secretary.

(3) Registration for the facility is achieved when the Executive Secretary receives the following:

(a) a current and complete application form DRC-10 for registration of radiation machines; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the Executive Secretary through receipts for the remittance of the registration fee.

R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Executive Secretary containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators.

R313-16-233. Notification of Intent to Provide Servicing and Services.

(1) Persons engaged in the business of installing or offering to install radiation machines or engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State shall notify the Executive Secretary of the intent to provide these services within 30 days following the effective date of this rule or, thereafter, prior to furnishing or offering to furnish these services.

(2) The notification shall specify:

(a) that the applicable requirements of these rules have been read and understood;

(b) the services which will be provided;

(c) the training and experience that qualify for the discharge of the services; and

(d) the type of measurement instrument to be used, frequency of calibration, and source of calibration.

(3) For the purpose of Section R313-16-233, services may include but shall not be limited to:

(a) installation or servicing of radiation machines and associated radiation machine components; and

(b) calibration of radiation machines or radiation measurement instruments or devices.

(4) Individuals shall not perform the services listed in Subsection R313-16-233(3) unless they are specifically stated

for that individual on the notification of intent required in Subsection R313-16-233(1) and the complete information required by Subsection R313-16-233(2) has been received by the Executive Secretary.

R313-16-235. Designation of Registrant.

The owner or lessee of a radiation machine is the registrant. The registrant shall be responsible for penalties imposed under the Executive Secretary's escalated enforcement authority, see Rule R313-14.

R313-16-240. Reciprocal Recognition of Registration or License.

Radiation machines from jurisdictions other than the State of Utah may be operated in this state for a period of less than 30 days providing that the requirements of Section R313-16-280 have been met and providing they are properly registered or licensed with the State Agency having jurisdiction over the office directing the activities of the individuals operating the radiation machines. Radiation machines operating under reciprocity may be inspected pursuant to Section R313-16-290.

R313-16-250. Report of Changes.

The registrant shall send written notification within 14 working days to the Executive Secretary when:

(1) there are changes in location or ownership of a radiation machine;

(2) radiation machines are retired from service;

(3) radiation machines are put in storage or returned to service from storage; or

(4) modifications in facility or equipment are made that might reasonably be expected to effect compliance under the terms of these rules.

R313-16-260. Approval Not Implied.

Registration does not constitute approval of activities performed under the registration and no person shall state or imply that activities under the registration have been approved by the Executive Secretary.

R313-16-270. Transferor, Assembler, or Installer Obligation.

(1) Persons who sell, lease, transfer, lend, dispose, assemble, or install a radiation machine in this state shall notify the Executive Secretary within 14 working days of the following:

(a) the name and address of the person who received the machine and also the name and address of the new registrant of the machine if not the same;

(b) the manufacturer, model, and serial number of the master control of the radiation machine and the number of x-ray tubes transferred; and

(c) the date of transfer of the radiation machine.

(2) Radiation machine equipment or accessories shall not be installed if the equipment will not meet the requirements of these rules when installation is completed.

(3) Reporting Compliance. Assemblers who install one or more components into a radiation machine system or subsystem, shall certify that the equipment meets the standards of these rules. A copy of this certification shall be transmitted to the purchaser and to the Executive Secretary within 14 working days following the completion of the installation.

(4) Certification can be accomplished by providing the following in conjunction with the information required by Section R313-16-250 and Subsection R313-16-270(1):

(a) the full name and address of the assembler and the date of assembly or installation;

(b) a statement as to whether the equipment is a replacement for other equipment, in addition to other equipment, or new equipment in a new facility;

(c) an affirmation that the applicable rules have been met;

(d) a statement of the type and intended use of the radiation machine system or subsystem, for example "radiographic-stationary general purpose x-ray;" and

(e) a list of the components which were assembled or installed into the radiation machine system or subsystem, identifying the components by type, manufacturer, model number, and serial number.

R313-16-275. Obligation of Equipment Registrant or Recipient of New Equipment.

The registrant of a radiation machine shall not allow the equipment to be put into operation until it has been determined that the facility in which it is installed meets the shielding and design requirements of Rule R313-28; see Sections R313-28-32, R313-28-200 and R313-28-450.

R313-16-280. Out-of-State Radiation Machines.

(1) Whenever a radiation machine is to be brought into the state, for either temporary or extended use, the person proposing to bring the machine into the state shall give written notice to the Executive Secretary at least three working days before the machine is to be used in the state. The notice shall include the type of radiation machine; the manufacturer model and serial number of the master control; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may, upon application to the Executive Secretary, obtain permission to proceed sooner.

(2) In addition, the out-of-state person shall:

(a) comply with the applicable portions of these rules;

(b) supply the Executive Secretary other information as the Executive Secretary requests.

R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the Executive Secretary or by independent qualified experts.

(2) Inspections may, at the Executive Secretary's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year

Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the Executive Secretary.

R313-16-291. Inspection Services.

Registrants shall only utilize qualified experts who have been registered by the Executive Secretary in accordance with Section R313-16-293. Registrants may also utilize inspectors from the Division of Radiation Control in lieu of registered qualified experts.

R313-16-292. Minimum Qualifications for Registration of Inspection Services.

A qualified expert who is engaged in the business of furnishing or offering to furnish inspection services at facilities shall meet the training and experience criteria developed by the Department. At a minimum, the training and experience shall include:

(1) Bachelor's degree in health physics, chemistry, biology, physical or environmental science plus one year full-time paid professional related experience, such as performing radiation safety evaluations in a hospital.

(a) An advanced degree in a related field may be substituted for one year of required experience; or

(2) Five years full-time paid professional, directly related work experience.

R313-16-293. Application for Registration of Inspection Services.

(1) Each qualified expert who is providing or offering to provide inspection services at facilities registered with the Executive Secretary shall complete an application for registration on a form prescribed by the Executive Secretary and shall submit all information required by the Executive Secretary as indicated on the form. A qualified expert must complete the registration process prior to providing services.

(2) Individuals applying for registration under Section R313-16-293 shall personally sign and submit to the Executive Secretary an attestation statement:

(a) that they have read and understand the requirements of these rules; and

(b) that they will document inspection items defined by the Executive Secretary on a form prescribed by the Executive Secretary; and

(c) that they will follow guidelines for the evaluation of x-ray equipment defined by the Executive Secretary; and

(d) that, except for those facilities where a registered qualified expert is a full-time employee, they will limit inspections to facilities with which they have no direct conflict of interest; and

(e) that radiation exposure measurements and peak tube potential measurements will be made with instruments which have been calibrated biennially by the manufacturer of the instrument or by a calibration laboratory accredited in x-ray calibration procedures by the American Association of Physicians in Medicine, American Association for Laboratory Accreditation, Conference of Radiation Control Program Directors, Health Physics Society or the National Voluntary Laboratory Accreditation Program; and

(f) that the calibration of radiation exposure measuring and peak tube potential measuring instruments used to evaluate compliance of x-ray systems with the requirements of these rules will include at least secondary level traceability to a National Institute of Standards and Technology, or similar international agency, transfer standard instrument or transfer standard source; and

(g) that they will make available to representatives of the Executive Secretary documents concerning the calibration of any radiation exposure measuring or peak tube potential measuring instrument used to evaluate compliance of x-ray systems; and

(h) that they or the registrant will submit to the Executive Secretary, within 30 calendar days after completion of an inspection, a written report of compliance or noncompliance; and

(i) that reports of items of noncompliance will include:

(i) the name of the facility inspected, and

(ii) the date of the inspection, and

(iii) the manufacturer, model number, and serial number or Utah identification number of the control unit for the radiation machine, and

(iv) the requirements of the rule where compliance was not achieved, and

(v) the manner in which the facility or radiation machine failed to meet the requirements, and

(vi) a signed commitment from the registrant of the radiation machine facility that the problem will be fixed within 30 days of the date the written report of noncompliance is submitted to the Executive Secretary; and

(vii) that all reports of compliance or noncompliance will contain a statement signed by the qualified expert acknowledging under penalties of law that all information contained in the report is truthful, accurate, and complete; and

(viii) that they acknowledge that they are subject to the provisions of Section R313-16-300.

(3) Individuals applying for registration under Section R313-16-293 shall attach to their application a copy of two inspection reports that demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c). The inspection reports shall pertain to inspections performed within the last two years.

R313-16-294. Issuance of Registration Certificate for Inspection Services.

Upon a determination that an applicant meets the requirements of these rules, the Executive Secretary shall issue a registration certificate for inspection services.

R313-16-295. Expiration of Registration Certificates for Inspection Services.

A registration certificate for inspection services shall expire at the end of the day on the date stated therein.

R313-16-296. Renewal of Registration Certificate for Inspection Services.

(1) Timely renewal of a registration certificate for inspection services is possible when:

(a) the qualified expert files an application for renewal of a registration certificate for inspection services 30 days in advance of the registration certificate expiration date and in accordance with Section R313-16-293, and

(b) the qualified expert attaches to the application documentation that they performed a minimum of two inspections in Utah under these rules each year the previous registration certificate was in effect. An applicant who did not complete the minimum number of inspections in Utah may, as an alternative, attach to the application documentation that they performed four inspections at facilities in other states. These four inspections shall

demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c).

(2) A registered qualified expert who allows a registration certificate to expire is no longer a qualified expert and may not perform inspection services that will be accepted by the Executive Secretary. Reapplication may be accomplished pursuant to Section R313-16-293.

R313-16-297. Revocation of Registration Certificate for Inspection Services.

A registration certificate for inspection services may be revoked by the Executive Secretary for any matter of deliberate misconduct pursuant to Section R313-16-300 or for misfeasance, malfeasance or nonfeasance.

R313-16-300. Deliberate Misconduct.

(1) Any registrant, applicant for registration, employee of a registrant or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any registrant or applicant for registration, who knowingly provides to any registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a registrant's, or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation of any registration issued by the Executive Secretary; or

(b) Deliberately submit to the Executive Secretary, a registrant, an applicant, or a registrant's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Executive Secretary.

(2) A person who violates Subsections R313-16-300(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-16-300(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any registration issued by the Executive Secretary; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a registrant, applicant, contractor, or subcontractor.

KEY: x-rays, inspections
September 14, 2007 19-3-104
Notice of Continuation July 10, 2006

R313. Environmental Quality, Radiation Control.
R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.
R313-24-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

R313-24-2. Scope.

(1) The requirements in Rule R313-24 apply to source material milling operations, byproduct material, and byproduct material disposal facilities.

R313-24-3. Environmental Analysis.

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Executive Secretary shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

R313-24-4. Clarifications or Exceptions.

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); 40.41(c); the introduction to 40.42(k) and 40.42(k)(3)(i); 40.61(a) and (b); 40.65; and Appendix A to Part 40(2002) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

(2) The substitution of the following:

(a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;

(b) "Executive Secretary" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.41(c), 40.61, and 40.65;

(c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);

(d) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);

(e) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);

(f) In 10 CFR 40.42(k)(3)(i), "R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";

(g) "source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);

(h) "Executive Secretary" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);

(i) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

(j) In Appendix A to 10 CFR part 40, the following substitutions:

(i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "Board" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "Executive Secretary" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criterions 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10 of Appendix A;

(v) "license issued by the Executive Secretary" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

(vi) "Executive Secretary" for reference to "NRC" in Criterion 4D;

(vii) "representatives of the Executive Secretary" for reference to "NRC staff" in Criterion 6(6);

(viii) "Executive Secretary-approved" for reference to "Commission-approved" in Criterion 6A(1) and Criterion 9;

(ix) "Executive Secretary" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

(x) "Executive Secretary" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

KEY: environmental analysis, uranium mills, tailings, monitoring
October 7, 2002 19-3-104
Notice of Continuation September 7, 2007 19-3-108

R331. Financial Institutions, Administration.
R331-3. Rule to Govern Persons Soliciting Savings or Share Accounts, Deposit Accounts, or Similar Evidence of Indebtedness or Participation Interests Therein from Residents of this State.
R331-3-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Subsections 7-1-401(5), 7-1-501(8) and Section 7-1-505.

(2) The purpose of this rule is to regulate persons soliciting savings or share accounts, deposit accounts or similar evidence of indebtedness or participation interests therein from residents of this state.

(3) The purpose of this rule is to protect the deposits of the residents of this state.

R331-3-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Person" means any individual, partnership, corporation, association or other entity.

R331-3-3. Registration.

Any person "soliciting savings or share accounts, deposit accounts or similar evidence of indebtedness or participation interest therein from residents of this state" as defined in Section 7-1-501(8) shall register with the department on forms designated by the commissioner.

R331-3-4. Fees.

(1) Each person registering with the department shall pay an annual registration fee of $100.00.

(2) Each person registering with the department shall be subject to examination by the department at such times as the commissioner designates.

KEY: financial institutions
1995 **7-1-401(8)**
Notice of Continuation September 24, 2007 **7-1-501(8)(d)**
7-1-505

R331. Financial Institutions, Administration.
R331-17. Publication and Disclosure of Acquisition of Control, Merger, or Consolidation Applications to the Department of Financial Institutions.
R331-17-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301, 7-1-703, 7-1-704 and 7-1-705.

(2) This rule applies to all applicants to the department for change of control, acquisition of, merger, or consolidation with any financial institution chartered by the state.

(3) Public disclosure by newspaper publication of applications to the department for change of control is necessary to increase the amount of timely and useful information available to the public thereby increasing the department's sources of information in connection with these applications and enhancing its ability to prevent dishonest or unqualified persons from acquiring control of state chartered financial institutions.

R331-17-2. Definitions.

(1) "Control" means "control" as defined in 7-1-103.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Department" means the Department of Financial Institutions.

R331-17-3. Publication of Notice of Application.

(1) Within ten days after the department has accepted an application for change of control, acquisition of, merger, or consolidation with a financial institution chartered by the state, the applicant shall publish an announcement of such acceptance in three successive issues of a newspaper of general circulation in the county where the principal place of business is established.

(2) The newspaper announcement shall contain:

(a) The name(s) of the proposed acquirer(s);

(b) The name of the financial institution whose stock is sought to be acquired;

(c) Date application was accepted by the department;

(d) A statement that any person wishing to comment on the proposed changes may submit written comments to the commissioner within 20 days following the required newspaper publication.

R331-17-4. Waiver of Publication.

(1) In circumstances requiring prompt action, the commissioner may, if it is in the public interest:

(a) Waive the publication requirement of Rule R331-17-3;

(b) Waive or shorten the public comment period; or

(c) Act on the proposed change in control prior to the expiration of the public comment period.

(2) The commissioner may determine it is in the public interest to grant confidential treatment to an application.

(3) The commissioner may waive publication of notice of an application if notice has been or will be published pursuant to a rule of another state or federal agency.

KEY: financial institutions

1995	**7-1-703**
Notice of Continuation September 24, 2007	**7-1-704**
	7-1-705
	7-1-301(5)

R331. Financial Institutions, Administration.
R331-23. Lending Limits for Banks, Industrial Loan Corporations.
R331-23-1. Authority, Scope, and Purpose.

(1) The Department of Financial Institutions enacts this rule under authority granted by Sections 7-1-301, 7-3-19, and 7-8-20.

(2) The rule applies to all loans and extensions of credit made by banks and industrial loan corporations chartered in the state and their subsidiaries.

(3) The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors and stockholders to excessive risk.

(4) The rule provides exceptions to the general lending limits set forth in Sections 7-3-19 and 7-8-20.

(5) The rule does not apply to loans made by a bank or an industrial loan corporation to a subsidiary. The rule does not apply to an extension of credit that is subject to, or expressly exempted from, a federal statute or regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.

R331-23-2. Definitions.

(1) "Affiliate" means any institution that controls the bank or industrial loan corporation and any other institution that is controlled by the institution that controls the bank or industrial loan corporation. However, "affiliate" does not include a subsidiary of the bank or industrial loan corporation.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Contractual commitment to advance funds" means:

(a) an obligation on the part of the bank or industrial loan corporation to make payments to a third party contingent upon default by the bank's or industrial loan corporation's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or

(b) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes standby letters of credit, guarantees, puts and other similar arrangements. A binding, written commitment to lend is a "contractual commitment to advance funds" if it and all other outstanding loans to the borrower are within the bank's or industrial loan corporation's lending limit on the date of the commitment.

(4) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(5) "Consumer paper" includes paper relating to automobiles, mobile homes, recreational vehicles, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items.

(6) For purposes of the rule, "Control" means the ownership or control of at least 50% of the voting stock.

(7) "Current market value" means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service.

(8) "Financial instruments" means stocks, notes, bonds, and debentures traded in a national securities exchange, OTC margin stocks, as defined by the Federal Reserve Board at 12 CFR 220.2, 1996, commercial paper, negotiable certificates of deposit, bankers acceptances, and shares in money market and mutual funds of the type which issue shares in which banks or industrial loan corporations may perfect a security interest.

(9) "Institution" means "institution" as defined in Section 7-1-103.

(10) "Investment grade securities" means marketable obligations in the form of a bond, note or debenture rated in one of the four highest ratings of a nationally recognized rating agency. "Investment grade securities" does not include investments which are predominantly speculative in nature.

(11) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing bank or industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating bank or industrial loan corporation, but not the originating bank or industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the bank or industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(12) "Loans and extensions of credit" does not include:

(a) A receipt by a bank or industrial loan corporation of a check deposited in or delivered to the bank or industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the bank or industrial loan corporation, provided that the indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring bank or industrial loan corporation ;

(c) An endorsement or guarantee for the protection of a bank or industrial loan corporation of any loan or other asset previously acquired by the bank or industrial loan corporation in good faith or any indebtedness to a bank or industrial loan corporation for the purpose of protecting the bank or industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the bank or industrial loan corporation;

(e) The giving of immediate credit to a bank or industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing bank or industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any

political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(13) "Person" means "person" as defined in Section 7-1-103.

(14) "Readily marketable collateral" means financial instruments which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or similarly available daily bid and ask price market.

(15) "Sale of Federal Funds" means any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(16) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to the beneficiary on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the account party, or

(b) To make payment on account of any indebtedness undertaken by the account party, or

(c) To make payment on account of any default by the account party in the performance of an obligation.

(17) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(18) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and the portion of subordinated notes and debentures with more than one year maturity remaining.

R331-23-3. General Rule.

(1) The total loans and extensions of credit by a bank or industrial loan corporation to any person outstanding at one time and not fully secured, as determined in a manner consistent with this rule, by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15% of the amount of the bank's or industrial loan corporation's total capital.

(2) The total loans and extensions of credit by a bank or industrial loan corporation to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds and standing may not exceed 10% of the total capital of the bank or industrial loan corporation. This limitation is separate from and in addition to the 15% limitation described in Subsection (1), above.

(a) At all times, the total loans or extensions of credit to a person based on the limitation for banks in Section 7-3-19(2) and for industrial loan corporations in Rule R331-23-3(2) shall be secured by readily marketable collateral having a current market value of at least 100% of the total amount of funds outstanding, excluding accrued or discounted interest.

(b) Each bank or industrial loan corporation shall institute adequate procedures to ensure that the collateral value fully secures the outstanding loan or extension of credit at all times. At a minimum, each bank or industrial loan corporation shall perfect its security interest in the collateral and shall calculate the market value of the collateral at least monthly, or more frequently, as may be deemed necessary to ensure compliance with Section 7-3-19(2) for banks and Rule R331-23-3(2) for industrial loan corporations.

(c) If collateral values fall below 100% of the outstanding loan, the bank or industrial loan corporation must, within 60 days, obtain additional collateral in an amount sufficient to provide 100% coverage, require reduction of the loan or extension of credit, or sell the collateral and liquidate the debt. During this period, the loan or extension of credit will be considered nonconforming.

R331-23-4. Combining Loans to Separate Borrowers - General Rule.

(1) Loans or extensions of credit to one person will be combined where the proceeds of the loan or extension of credit are to be used for the direct benefit of any other person or persons.

(2) Loans or extensions of credit to a general partnership, joint venture or association shall, for purposes of this rule, be considered loans or extensions of credit jointly and severally to each member of such partnership, joint venture or association unless the agreement creating the general partnership, joint venture or association provides otherwise, in which case the loans or extensions of credit shall be allocated to each member only to the extent provided for by the terms of any such agreement.

(3) The sum of all loans or extensions of credit by a bank or industrial loan corporation outstanding at any one time to a person and all of its affiliates may not exceed 50% of the bank's or industrial loan corporation's total capital.

R331-23-5. Exceptions to the Lending Limits.

(1) The lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest.

(2) Loans Secured by U.S. Obligations and General Obligations of a state or political subdivision.

(a) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or Treasury bills of the United States or by other similar obligations fully guaranteed as to the principal and interest by the United States or general obligations of a state or a political subdivision are not subject to any limitation based on total capital.

(b) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or guaranteed by the United States or general obligations of a state or political subdivision.

(c) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general 15% limitation, the loan must be brought into conformance within 60 days.

(3) Loans to or Guaranteed by a Federal Agency

(a) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on total capital.

(b) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(c) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within 60 days after demand for payment is made.

(d) A guarantee or commitment is unconditional if the protection afforded the bank or industrial loan corporation is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's or industrial loan corporation's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period

after its occurrence, or a requirement of good faith on the part of the bank or industrial loan corporation.

(4) Loans Secured by Segregated Deposit Accounts

(a) Loans or extensions of credit secured by a segregated deposit account in the lending bank or industrial loan corporation shall not be subject to any limitation based on total capital.

(b) The bank or industrial loan corporation must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(c) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank or industrial loan corporation must establish internal procedures which will prevent the release of the security.

(5) Loans to Financial Institutions with the Approval of the commissioner

(a) Loans or extensions of credit to any financial institution or to any receiver, conservator, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the commissioner, shall not be subject to any limitation based on total capital.

(b) This exception is intended to apply only in emergency situations where a bank or industrial loan corporation is called upon to provide assistance to another financial institution.

(6) Discount of Consumer Paper

(a) This exception allows a bank or industrial loan corporation to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10% of its total capital (in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the person transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank or industrial loan corporation to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(b) Under certain circumstances, consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's or industrial loan corporation's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) any officer designated by the bank's or industrial loan corporation's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank or industrial loan corporation is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(7) Loans Secured by Livestock

(a) This exception allows a bank or industrial loan corporation to make loans or extensions of credit to one person in an amount equal to 10% of its total capital, in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115% of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank or industrial loan corporation must maintain in its files an inspection and appraisal report on the livestock pledged.

(b) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (i) is assigned to the bank or industrial loan corporation by a recordable instrument and (ii) is protected against being defeated by some other lien or claim, by payment to a person other than the bank or industrial loan corporation, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115% of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(8) Loans to Student Loan Marketing Association, Utah Board of Regents or Utah Higher Education Assistance Authority

Loans or extensions of credit to the Student Loan Marketing Association, the Utah Board of Regents or the Utah Higher Education Assistance Authority are not subject to any limitation based on total capital.

(9) Loans to Industrial Development Authorities and Housing Authorities

A loan or extension of credit to an industrial development authority, housing authority or similar public entity in the state is not a loan or extension of credit to the authority provided that:

(a) The bank or industrial loan corporation relies on the credit of the lessee or owner of the facility to be financed by the loan or extension of credit;

(b) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(c) The authority's interest is assigned to the bank or industrial loan corporation as security for the loan or a promissory note from the lessee or owner to the bank or industrial loan corporation provides a higher order of security than the assignment of a lease, trust deed or mortgage; and

(d) lessee's or tenant's rent or mortgage payment is assigned and paid directly to the bank or industrial loan corporation.

A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee or owner and will be combined with other obligations of the lessee or owner for purposes of Section 7-3-19 and Section 7-8-20.

(10) Other Exemptions

With the written approval of the commissioner other exemptions to the provisions of Section 7-3-19 and Section 7-8-20 may be permitted.

R331-23-6. Record Keeping.

(1) The board of directors shall review at least annually the most recent financial statements on all loans and extensions of credit to one person exceeding 10% of total capital. Based upon this review, the board of directors shall approve a determination that the conditions outlined in Rule R331-23-4 do not exist for such loans and extensions of credit. A statement of the above approval shall be incorporated into the minutes of the board of directors meeting at which the review was accomplished.

(2) In the case of loans and extensions of credit subject to the limitations of Section 7-3-19(2) and Rule R331-23-3(2), a record of the market value of the collateral securing such loans or extensions of credit shall be maintained as set forth in Rule R331-23-3.

KEY: loans, banks, industrial loan corporations*
July 16, 1997 7-3-19
Notice of Continuation September 28, 2007 7-8-20

R333. Financial Institutions, Banks.
R333-5. Discount Securities Brokerage Service by Banks.
R333-5-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3)(a) and Section 7-3-3.2.

(2) This rule governs the type of securities brokerage service state chartered banks may offer.

(3) The purpose of this rule is to limit securities activities to "discount brokerage" services and to give state chartered banks competitive equality with national banks which have their principal office in this state by granting the same rights and privileges to state chartered banks as are enjoyed by Utah's national banks.

R333-5-2. Definitions.

"Discount brokerage" means the practice of executing securities transactions solely at the direction of a bank customer but not providing that customer with any investment advice.

R333-5-3. Discount Brokerage Services.

A state chartered bank may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for bank customers and the bank shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The bank clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the bank;

(3) The transactions are without recourse;

(4) The bank makes no warranty as to the performance or quality of any security;

(5) The bank does not advise customers to make any particular investment;

(6) The bank's promotional material clearly explains the bank's limited role in the service; and

(7) The bank's promotional material clearly explains that the transactions are not federally insured.

KEY: banks and banking, securities
December 2, 1997 7-1-301(3)
Notice of Continuation September 17, 2007 7-3-3.2

R333. Financial Institutions, Banks.
R333-7. Investment by a State-Chartered Bank in Shares of Open-End Investment Companies.
R333-7-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(8)(b)(i) and Section 7-3-3.2.

(2) This rule permits a state-chartered bank to purchase for its own account shares of open-end investment companies subject to certain restrictions.

(3) This rule expands the eligible classes and types of investments for state-chartered banks and gives them rights, privileges and powers granted to national banks.

R333-7-2. Definitions.

(1) "Open-end investment company" is one in which the shares are purchased or sold at par. The fund must be an open-ended investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.

(2) "Total capital" means the sum of capital stock, surplus, undivided profits, reserves for loan losses, reserve for contingencies, and subordinated notes and debentures with more than one year maturity.

R333-7-3. Investment by a State-Chartered Bank in Shares of Open-End Investment Companies.

(1) A state chartered bank may purchase and hold shares of an open-end investment company which are purchased or sold at par without limitation if the portfolio of the company consists wholly of obligations of, or obligations which are fully guaranteed as to principal and interest by the United States or this state.

(2) A state-chartered bank may invest an amount not to exceed 15% of the bank's total capital in any one money market fund with a Standard and Poor's Money Market Fund Rating of AAAm.

KEY: banks and banking, investments
1995 7-1-301(8)(a)
Notice of Continuation September 10, 2007 7-3-3.2

R333. Financial Institutions, Banks.
R333-8. Authority for Banks to Issue Subordinated Capital Notes or Debentures.
R333-8-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(8) and Section 7-3-28.

(2) This rule applies to all commercial banks chartered by the State of Utah which issue convertible or non-convertible subordinated capital notes or debentures.

(3) The purpose of this rule is to establish the criteria and procedures for issuance of subordinated capital notes or debentures and limitations on the total amount of such instruments which may be outstanding in order to protect the bank's depositors and shareholders.

R333-8-2. Definitions.

(1) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(2) "Mandatory Convertible Securities" means any capital securities which require that at some future date the issuer must exchange common or perpetual preferred stock for the outstanding security.

(3) "Surplus" means the total of:

(a) the amount paid to the bank in excess of the par value of its capital stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock,

(b) amounts received as capital contributions, and

(c) amounts transferred to the capital surplus account from undivided profits.

R333-8-3. Authority to Issue Capital Notes and Debentures.

(1) Any bank may, with the authorization by resolution of its board of directors, make application to the commissioner for permission to issue mandatory convertible, non-convertible, or optional convertible capital notes or debentures, subordinated to the claims of depositors and other creditors.

(2) The commissioner may grant approval for the issuance of mandatory convertible subordinated capital notes or debentures in such amounts and under such terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions of Rule R331-5 have been complied with;

(b) The terms of any issue of mandatory convertible securities must require that all securities be converted to common stock or perpetual preferred stock within ten years of the date of issuance;

(c) The aggregate principal amount of all mandatory convertible securities outstanding at any time, together with the aggregate principal amount of all non-convertible or optional convertible securities outstanding shall not exceed 150% of the sum of the bank's capital stock and surplus accounts;

(d) Mandatory convertible securities may be redeemed prior to maturity only with the proceeds from the sale of common stock or perpetual preferred stock of the bank or bank holding company;

(e) The holder of the security cannot accelerate payment of principal except in the event of bankruptcy, insolvency, or reorganization;

(f) The security must be subordinate in right of payment to all senior indebtedness of the issuer. If the proceeds from the sale of such securities are to be loaned to an affiliate, that loan must be subordinated to the same extent as the original issue;

(g) The bank has a record of sound performance and management; and

(h) The securities shall not be used as collateral for loans or extensions of credit made by the bank.

(3) The commissioner may grant approval for the issuance of non-convertible or optional convertible subordinated capital notes or debentures in such amounts and under such terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions and conditions of Department Rule R331-5 have been complied with;

(b) Each issue shall have a weighted average maturity at issuance of not less than seven years;

(c) The aggregate principal amount of all non-convertible and optional convertible securities outstanding at any time, together with the aggregate principal amount of all mandatory convertible securities outstanding shall not exceed 150% of the sum of the bank's capital stock and surplus accounts;

(d) The holder of the security cannot accelerate payment of principal except in the event of bankruptcy, insolvency, or reorganization;

(e) The security must be subordinate in right of payment to all senior indebtedness of the issuer. If the proceeds from the sale of such securities are to be loaned to an affiliate, that loan must be subordinated to the same extent as the original issue;

(f) The bank has a record of sound performance and management and can demonstrate that the bank will be able to generate earnings and cash flows adequate to service the subordinated notes or debentures; and

(g) The subordinated capital notes or debentures shall not be used as collateral for loans or extensions of credit made by the bank.

R333-8-4. Disclosure.

All subordinated capital notes or debentures issued by a bank, whether convertible or not, shall have the following provisions made in the body of the note or debenture and these provisions shall be disclosed in either a bold face type or in a size of type which is larger than the type face used in the other provisions carried in the body of the note or debenture.

(1) This obligation is NOT insured by the Federal Deposit Insurance Corporation.

(2) This obligation is subordinated to the claims of all depositors and other creditors.

(3) Subordinated capital notes or debentures shall not be used as collateral for loans made by the bank.

(4) The disclosure required under subsections (1) and (2) of this section shall be prominently displayed in all advertising of capital notes or debentures.

R333-8-5. Use as Capital.

The outstanding principal amount of all mandatory convertible securities and all subordinated capital notes or debentures not maturing within one year shall be added to the capital of the issuing bank for the purpose of determining the amount of "total capital" under the provisions of Section 7-3-19.

R333-8-6. Exceptions to the Limits on Amounts of Subordinated Capital Notes or Debentures Which May Be Issued.

(1) Notwithstanding the limitation imposed by this rule, subordinated capital notes or debentures assumed under a supervisory action or plan or reorganization pursuant to Sections 7-2-1, 7-2-12 or 7-2-18 may, at the discretion of the commissioner, exceed the maximum limitation imposed by this rule.

(2) Notwithstanding the limitation imposed by this rule, subordinated capital notes or debentures issued to the Federal Deposit Insurance Corporation pursuant to Section 13(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), may, at the discretion of the Commissioner, exceed the maximum limitation imposed by this rule.

KEY: banks and banking
1995 7-1-301(8)(e)
Notice of Continuation September 17, 2007 7-3-28

R333. Financial Institutions, Banks.
R333-9. Indemnification of Directors, Officers, and Employees.
R333-9-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(4) and 7-3-13.

(2) This rule defines, clarifies and limits the extent to which a state chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers and employees under the general corporate powers provision of Sections 16-10a-901 through 16-10a-909.

(3) The purpose of this rule is to deter acts that could threaten the safety and soundness of all state chartered banks by specifically prohibiting the indemnification of directors, officers and employees when a supervisory action results in a final order assessing civil money penalties or requiring affirmative action in the form of payment by an individual to a state chartered bank; to specifically set forth the commissioner's authority to deny or modify an indemnification which appears to be inconsistent with the standards stated in the bank's indemnification article or which would jeopardize the safety and soundness of any state chartered bank; and to specifically prohibit any state chartered bank from insuring any of its directors or employees against a final supervisory order assessing civil money penalties.

R333-9-2. Indemnification of Directors, Officers, and Employees.

(1) A state chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers and employees for expenses personally incurred in actions to which the directors, officers or employees are parties or potential parties by reason of the performance of their official duties. Indemnification articles which substantially reflect the general provisions of Sections 16-10a-901 through 16-10a-909 are presumed by the department to be within the corporate powers of state chartered banks.

(2) The indemnification provisions shall not allow the indemnification, directly or indirectly, of directors, officers, or employees of a state chartered bank against expenses, penalties or other payments incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to the bank.

(3) In accordance with his supervisory responsibilities, the commissioner may, in his discretion, review the threat to bank safety and soundness posed by any indemnification or proposed indemnification of directors, officers, or employees of any state chartered bank, or for the consistency of any such indemnification with the standards adopted by that bank in its articles of incorporation or bylaws. Based upon this review, the commissioner may direct a modification of a specific indemnification by a bank through appropriate administrative action.

(4) A state chartered bank may provide in its articles of incorporation or bylaws for the payment of premiums for insurance covering the liability of its directors, officers or employees to the extent that the coverage is provided for in Sections 16-10a-901 through 16-10a-909, except that the provision shall explicitly exclude insurance coverage for a formal supervisory order assessing civil money penalties against a bank director, officer or employee.

KEY: banks and banking
1995 7-1-301(4)
Notice of Continuation September 17, 2007 7-3-13

R333. Financial Institutions, Banks.
R333-10. Securities Activities of Subsidiaries and Affiliates of State-Chartered Banks.
R333-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-3-3.2 and 7-3-21.

(2) This rule sets forth standards to govern securities activities of state chartered banks.

(3) The purpose of this rule is to establish safeguards to ensure that subsidiaries or affiliates engaged in securities activities do not endanger the safeness and soundness of state chartered banks.

R333-10-2. Definitions.

(1) "Affiliate" means any company that directly or indirectly, through one or more intermediaries, controls or is under common control with a state chartered bank.

(2) "Bona fide subsidiary" means a subsidiary of a bank that at a minimum:

(a) Is adequately capitalized;

(b) Is physically separate and distinct from the depository operations of the bank;

(c) Does not share a common name or logo with the bank;

(d) Maintains separate accounting and other corporate records;

(e) Shares no common officers or employees with the bank or its holding company;

(f) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank or its holding company;

(g) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

(3) "Company" means any corporation, other than a bank, any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) "Control" means "control" as defined in Section 7-1-103.

(5) "Extension of credit" means the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes:

(a) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) Issuance of a standby letter of credit, or other similar arrangement regardless of name or description;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(f) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for

(i) accrued interest or

(ii) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(g) Any other transaction as a result of which a natural person or company becomes obligated to pay money, or its equivalent to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(6) "Investment quality debt security" means a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture, the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(7) "Investment quality equity security" means marketable common stock that is ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top rated preferred corporate stock.

(8) "Subsidiary" means any company controlled by a bank.

(9) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

R333-10-3. Investment in Securities Activities.

(1) No bank with total capital of less than 7% of its total assets may invest in a securities subsidiary.

(2) No bank may invest more than 10% of its capital in a securities subsidiary.

(3) A bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless and except as otherwise provided by (4)(b) of this section, the subsidiary's underwriting activities that would not be authorized to the bank under Section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by Section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378, are limited to, and therefore continue to be limited to, one or more of the following:

(a) underwriting of investment quality debt securities,

(b) underwriting of investment quality equity securities,

(c) underwriting of investment companies not more than 25% of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities, or

(d) underwriting of investment companies not more than 25% of whose investments consist of investments other than obligations of the United States or United States Government agencies, repurchase agreements involving such obligations, bank certificates of deposit, banker's acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and that subsidiary conducts securities activities not authorized to the bank under section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378.

(4) Subsection (3) of this section not withstanding, a subsidiary of a state-chartered bank may engage in underwriting activities other than as limited thereby provided that the following conditions are met:

(a) The subsidiary is a member in good standing of the

National Association of Securities Dealers, "NASD";

(b) The subsidiary has been in continuous operation for the five year period preceding notice to the commissioner as required by this part;

(c) No director, officer, general partner, employee, or 10% shareholder of any class of voting securities of the subsidiary has been charged within five years of the notice required by this part of any felony or misdemeanor:

(i) involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or

(ii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(d) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary is or has been subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(e) None of the subsidiary's directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary are or have been subject to an order entered within five years of the notice required by this part issued by:

(i) the Securities and Exchange Commission entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934, 15 U.S.C. 780, 78o-4, or Section 230(c) or (f) of the Investment Advisors Act of 1940, 15 U.S.C. 80b-3(c), or (f);

(ii) the Utah Securities Division entered pursuant to Sections 61-1-1 or 61-1-2; or

(iii) the state securities agency of another state which are similar to Sections 61-1-1 and 61-1-2.

(f) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

R333-10-4. Affiliation With a Securities Company.

A state chartered bank is prohibited from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless:

(1) The securities business of the affiliate is physically separate and distinct from the bank;

(2) The bank and affiliate share no common officers or employees;

(3) A majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate;

(4) No employee of the bank conducts securities activities on behalf of the affiliate on the premises of the bank;

(5) The bank and affiliate do not share a common name or logo; and

(6) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

R333-10-5. Filing a Notice.

(1) A bank or bank holding company shall notify the Commissioner of Financial Institutions of its intent to acquire or establish a subsidiary that:

(a) sells, distributes or underwrites stocks, bonds, debentures, notes, or other securities;

(b) acts as an investment advisor to any investment company;

(c) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; or

(d) engages in any other securities activity.

(2) Notice shall be in writing and must be received by the commissioner at least 60 days prior to the consummation of the acquisition or operation of the subsidiary, whichever is earlier.

(3) The 60-day notice requirement may be waived at the commissioner's discretion where such notice is unpracticable in the case of a purchase and assumption transaction or a supervisory merger.

R333-10-6. Restrictions.

A bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment company shall not:

(1) Purchase in its discretion as fiduciary, co-fiduciary, or managing agent any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary, co-fiduciary, or managing agent any security currently issued by an investment company advised by such subsidiary or affiliate, unless:

(a) The purchase is expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure;

(b) The purchase, although not expressly authorized under Subsection (1)(a), is otherwise consistent with the insured nonmember bank's fiduciary obligation, or the purchase is permissible under applicable federal or state statute or rule, or both;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stock, bonds, debentures, notes or other securities of which are currently underwritten or distributed by such subsidiary or affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or undistributed qualify as investment quality debt securities, or qualify as investment quality equity securities.

(4) Extend credit or make any loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by such subsidiary or affiliate of the bank;

(5) Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire:

(a) Any stock, bond, debenture, note, or other security currently underwritten or distributed by the subsidiary or affiliate;

(b) Any security currently issued by an investment company advised by the subsidiary or affiliate; or

(c) Any stock, bond, debenture, note or other security issued by the subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate.

(6) Make any loan or extension of credit to a subsidiary or affiliate of the bank that:

(a) Distributes or underwrites stocks, bonds, debentures, notes, or other securities, or

(b) Advises any investment company if the loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby.

(7) Make any loan or extension of credit to any investment company for which the bank's subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby; and

(8) Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's subsidiary or affiliate to underwrite or distribute the company's securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that the person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate.

R333-10-7. Nonmember Banks Not Authorized to Participate in Securities Activities.

Nothing in this section authorizes an insured nonmember bank to directly engage in any securities activity not authorized to it under Sections 16 and 21 of the Glass-Steagall Act, 12 U.S.C. 24, Seventh and 378.

KEY: banks and banking, securities, subsidiaries
1995 7-3-21
Notice of Continuation September 17, 2007

R333. Financial Institutions, Banks.
R333-12. Investment by State-Chartered Banks in Real Property Other Than Bank Premises.
R333-12-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301 and 7-3-18.

(2) This rule applies to all banks chartered by the State of Utah.

(3) The purpose of this rule is to authorize state-chartered banks with sufficient capital to invest in real property other than bank premises and prescribe requirements and restrictions to govern such activities.

R333-12-2. Definitions.

(1) An "Affiliate" of a bank means any corporation, business trust, association, or other similar organization:

(a) of which the bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50% of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(b) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of the bank who own or control either a majority of the shares of the bank or more than 50% of the number of shares voted for the election of directors of the bank at the preceding election, or by trustees for the benefit of the shareholders of the bank; or

(c) of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the bank; or

(d) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the bank or more than 50% of the number of shares voted for the election of directors of the bank at the preceding election, or controls in any manner the election of a majority of the directors of the bank, or for the benefit of whose shareholders or members all or substantially all of the capital stock of the bank is held by trustees.

(2) "Bank premises" means real property recorded as an asset on a bank's books or otherwise held by a bank which is used in the conduct of the bank's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future banking use where the minutes of the board of directors show the bank in good faith intends to utilize such property in the conduct of the bank's business within three years.

(3) "Capital stock" means the sum of

(a) the par value of all shares of the bank having a par value that have been issued,

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and

(c) such amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law.

(4) "Principal stockholder" means a person who owns 5% or more of any class of stock of a bank, any parent, or any affiliate thereof.

(5) "Surplus" means the total of

(a) the amount paid to the bank in excess of the par value of its capital stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock,

(b) amounts received as capital contributions, and

(c) amounts transferred to the capital surplus account from undivided profits.

(6) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

R333-12-3. Investment in Real Estate.

(1) A bank, directly or through a subsidiary, may invest an amount not exceeding 10 percent of the bank's capital stock and surplus in real property or in an entity organized to acquire interests in real property, for the purpose of producing income, for inventory and sale, or other development thereof, and may hold, sell, lease, operate, and otherwise exercise the rights it acquires in any such property if:

(a) the bank has total capital equal to at least 8% of its total assets as of the date the investment is made;

(b) no officer, director, employee, principal stockholder or affiliate has any interest in any property or entity in which the bank invests; and

(c) no officer, director, employee, principal stockholder or affiliate receives any compensation for arranging or effecting the investment by the bank.

(2) The limitations established in Subsection (1) do not apply to real property which the bank may acquire and hold:

(a) in satisfaction of debts previously contracted;

(b) at sales to foreclose liens or other security interests claimed by the bank in the properties acquired; and

(c) current and former bank premises and property originally acquired for future use as bank premises.

KEY: banks and banking, real estate investment
1995 7-1-301
Notice of Continuation September 24, 2007 7-3-18

R335. Financial Institutions, Consumer Credit.
R335-1. Rule Prohibiting Negative Amortizing Wrap Loans.
R335-1-1. Authority, Scope and Purpose.

(1) This amended rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all extensions of credit subject to Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is to prohibit wrap loans that will not fully service all obligations wrapped by the loan.

R335-1-2. Definitions.

"Wrap loan" means an extension of credit that includes an agreement by the lender to service all or part of the balance due on other debts owed by the borrower out of payments made on the wrap loan.

R335-1-3. Rule Prohibiting Negative Wrap Loans.

All wrap loans subject to Title 70C shall provide for a minimum monthly payment sufficient to pay at least the monthly interest on the wrap loan and the total monthly payment, including interest, principal, escrow or reserve payments, or both, on all obligations wrapped by the loan.

KEY: financial institutions
1995 70C-8-102(1)(e)
Notice of Continuation September 21, 2007

R335. Financial Institutions, Consumer Credit.
R335-2. Rule Prescribing Allowable Terms and Disclosure Requirements for Variable and Adjustable Interest Rates in Consumer Credit Contracts.
R335-2-1. Authority, Scope, and Purpose.

(1) This rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all credit transactions subject to the provisions of Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is

(a) to distinguish variable or adjustable interest rates from other kinds of rate formulas or provisions, such as a demand note or a unilateral right to change terms,

(b) to specify what must be included in rate formulas represented to be variable or adjustable, and

(c) to specify certain disclosure requirements under state and federal law applicable to variable or adjustable rate and other formulas.

R335-2-2. Definition.

For purposes of this rule, "variable or adjustable rate" shall refer to any interest rate or finance charge in a consumer credit agreement which varies or fluctuates in accordance with a specified index, whether or not any variation is subject to a minimum or maximum change, or both, or a floor or ceiling rate, or both.

R335-2-3. Permissible Indexes.

(1) Any index may be used in a variable or adjustable rate formula if:

(a) it references a rate or value completely beyond the lender's control, or

(b) it is based entirely on the lender's weighted cost of funds, or

(c) it is a rate used by the lender as a basis for setting the rate on most of its non-consumer loans, provided that at least half the lender's total credit outstanding is not consumer credit during the entire period the rate is an index for any variable or adjustable rate consumer loan; and

(2) All information pertinent to setting or calculating the rate is readily available to the borrower during the entire term of the credit agreement.

R335-2-4. Initial Disclosure Requirements.

Except for an internal index as described in Rule R335-2-3 above, if any index is derived or calculated from two or more rates or values, or both, each rate or value, or both, must be specifically disclosed in the original credit agreement, together with the method to be used for calculating the index, and thereafter each calculation of the index must be made in the manner disclosed utilizing each rate or value, or both, described. This section shall not prevent a change of any term of a variable or adjustable rate formula in an open-end consumer credit contract in accordance with Section 70C-4-102.

R335-2-5. Subsequent Disclosure Requirements.

(1) Any change in the applicable rate resulting from a change in the numerical value of an index need not be disclosed in advance of the change.

(2) Each regular statement of account shall state the rate or weighted average of rates applicable to the account during the period covered by the statement; otherwise, it will not be necessary to give notice of any change in the applicable rate or describe the amount of any change.

R335-2-6. Specific Adjustment Schedule Required.

Any credit agreement containing a variable or adjustable rate must include a schedule stating when the rate will be adjusted and must require adjustment of the rate in accordance with that schedule.

KEY: financial institutions
1995 70C-8-102(1)(e)
Notice of Continuation September 24, 2007

R335. Financial Institutions, Consumer Credit.
R335-4. Notice Concerning Refund of Unearned Credit Insurance Premiums Upon Prepayment of a Consumer Debt.
R335-4-1. Authority, Scope and Purpose.

(1) This rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all credit transactions subject to Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is to require all consumer creditors, including assignees or other successors in interest, to notify a borrower when a debtor may be entitled to a separate refund of unearned credit insurance premiums.

R335-4-2. Notice Concerning Separate Refund of Unearned Credit Insurance Premiums Required.

If a debtor becomes entitled to a refund of premiums paid for credit insurance, as defined in Section 70C-6-102, that terminates prior to the end of the term for which it was written, and if the debtor does not receive a refund or credit of the unearned insurance premiums at the time of prepayment or termination, the party receiving the final payment or to whom the obligation was last owed shall promptly notify the debtor of the right to a separate refund of the unearned insurance premiums. The notice shall also state the name and address of each party who should be contacted about obtaining the refund if known to the party providing the notice.

KEY: financial institutions
1995 70C-8-102(1)(e)
Notice of Continuation September 21, 2007

R337. Financial Institutions, Credit Unions.
R337-2. Conversion from a Federal to a State-Chartered Credit Union.
R337-2-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301 and 7-1-706, and Subsection 7-1-713(4).

(2) This rule applies to federally chartered credit union converting to a state chartered credit union.

(3) This rule establishes the requirements and procedures for converting from a federally chartered credit union to a state chartered credit union.

R337-2-2. Definitions.

(1) "Applicant" means the federally chartered credit union converting to a credit union charter issued by the state.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Federally chartered credit union" means a credit union organized under the laws of the United States.

(4) "State chartered credit union" means a credit union chartered by the state of Utah.

R337-2-3. Conversion Application.

(1) The applicant must file an application on a form acceptable to the department.

(2) As part of the application the following documents or information must be provided:

(a) Year to date financial statements for the most recent month end:

(b) Delinquent loan schedule annotated to reflect collection problems as of the most recent month end;

(c) Explanation and appropriate documents relative to any changes in insurance of member accounts;

(d) Resolution of the board of directors approving the proposed conversion;

(e) Sample of the Notice of Special Meeting of the Members;

(f) Sample of the ballot to be sent to members; and

(g) Approval of the conversion from the National Credit Union Administration.

R337-2-4. Conversion Procedure.

(1) The procedure set forth in Section 7-1-706 shall be followed.

(2) The effective date of the conversion will be the date on which the commissioner issued an order aproving the conversion. If a later effective date is desired, the credit union board of directors must request that effective date as part of the application.

KEY: credit unions
November 3, 1997 **7-1-713(4)**
Notice of Continuation September 5, 2007

R337. Financial Institutions, Credit Unions.
R337-5. Allowance for Loan and Lease Losses - Credit Unions.
R337-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-9-29.

(2) This rule applies to all state-chartered credit unions.

(3) This rule requires the allowance account for loan and lease losses (ALLL) be maintained in accordance with Generally Accepted Accounting Principles (GAAP).

R337-5-2. Definitions.

(1) "Adjusted Loss" means the historical loss adjusted for economic or other factors.

(2) "Historical Loss" means the ratio of loan losses (actual losses less recoveries) to the average total loans outstanding for the period.

(3) "Homogeneous Loan Pools" means groups of loans sharing common risk factors.

(4) "In process of collection" means collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future.

(5) "Well secured" means a debt that is secured by:

(a) collateral with sufficient realizable value to discharge the debt in full, including accrued interest; or

(b) the guarantee of a financially responsible party.

R337-5-3. Allowance Account for Loan and Lease Losses.

(1) Each credit union is required to establish and maintain a methodology to determine the amount needed in an allowance account for loan and lease losses in accordance with GAAP. The account should be shown on the books as a contra-asset account, not an equity account. In determining the appropriate allowance account balance, each credit union shall:

(a) Separate the loan portfolio into homogeneous loan pools based upon common risk factors;

(b) Calculate the net loss percentage of each pool, using the historical loss or adjusted loss method, and apply that percentage to all loans in that pool;

(c) Individually classify loans with unique characteristics; and

(d) Add the resulting amounts to determine the amount needed in the ALLL.

(2) At least annually, the method used by the credit union to determine the ALLL must be validated by a qualified party independent from the estimation process.

(3) Sufficient documentation must be maintained to support the methodology and allow the ALLL to be validated.

(4) In conjunction with this rule, the credit union's Board of Directors must adopt a policy ensuring that loans are written off in a timely manner. The policy should include as a minimum a requirement that loans be charged off at 180 days past due unless well secured and in the process of collection.

(5) Whenever the allowance account for loan and lease losses is materially less than or greater than collection problem loans or does not fairly represent the estimated losses in the portfolio, an immediate adjustment shall be made for the amount of the deficiency or surplus. Adjustments to the account will be accomplished by debit or credit entries to a "Provision for Loan Losses" expense account in accordance with generally accepted accounting principles.

(6) At the close of each accounting period and prior to the payment of a dividend, a credit union shall make a placement to the regular reserve as required by Section 7-9-30. After the required placement has been made, unless the credit union is under prompt corrective action, a credit union may transfer from the regular reserve to undivided earnings, the amount that has been expended to the provision for loan and lease losses during the same period.

(7) The regular reserve and allowance for loan and lease losses shall not be combined for purposes of calculating the placement to the regular reserve as required by Section 7-9-30.

KEY: credit unions, loans
September 5, 2003 7-9-29
Notice of Continuation September 5, 2007

R337. Financial Institutions, Credit Unions.
R337-7. Discount Securities Brokerage Service by State-Chartered Credit Unions.
R337-7-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service state chartered credit unions may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by state chartered credit unions, similar to the discount brokerage services allowed state chartered banks and industrial loan corporations.

R337-7-2. Definitions.

(1) "Discount brokerage" means the practice of executing securities transactions solely at the direction of a credit union member but not providing that member with any investment advice.

R337-7-3. Discount Brokerage Services.

A credit union may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for credit union members and the credit union shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The credit union clearly acts solely at the member's direction;

(2) The transactions are for the account of the member and not the account of the credit union;

(3) The transactions are without recourse;

(4) The credit union makes no warranty as to the performance or quality of any security;

(5) The credit union does not advise members to make any particular investment;

(6) The credit union's promotional material clearly explains the credit union's limited role in the service; and

(7) The credit union's promotional material clearly explains that the transactions are not federally insured.

KEY: credit unions
December 2, 1997 7-1-301(3)
Notice of Continuation September 28, 2007

R337. Financial Institutions, Credit Unions.
R337-8. Accounts for Parties Other Than Individual Members in State-Chartered Credit Unions.
R337-8-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs accounts and loans to parties other than individuals in state chartered credit unions.

(3) The purpose of the rule is to allow state chartered credit unions to maintain accounts in the name of businesses or entities other than individual members to the same extent as credit unions chartered under the laws of the United States.

R337-8-2. Business and Other Accounts.

A state chartered credit union may open a share, draft, certificate or loan account in the name of a party other than an individual member if all equity owners or, in the case of an association or cooperative, all members of the entity are within the credit union's field of membership as defined in the credit union's bylaws if the bylaws have been approved by the Commissioner of Financial Institutions. Loans to an entity other than an individual member may not exceed the entity's unencumbered shares or deposits, or both.

KEY: credit unions
1995 7-1-301(3)
Notice of Continuation September 28, 2007

R337. Financial Institutions, Credit Unions.
R337-9. Schedule for Retention or Destruction of Records of Credit Unions Under the Jurisdiction of the Department of Financial Institutions.
R337-9-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(7).

(2) This rule establishes a schedule for the retention of records of credit unions.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records, which have a high degree of usefulness and to prescribe the period for which records of each class are retained.

(4) This rule specifically exempts credit unions from the requirements of Rule R331-10.

R337-9-2. Definitions.

Key to abbreviations:
Figures - years
P - permanently

R337-9-3. General Rule.

All credit unions under the jurisdiction of the Department of Financial Institutions shall retain and preserve all records listed in the following schedule for the period indicated for specific type:

TABLE

(1) Accounting and Auditing	
(a) Financial statement	10
(b) Cash received vouchers	7
(c) General ledger	P
(d) General journal/cash records	P
(e) Cash accounts reconciliation journals	7
(2) Administrative	
(a) Bylaws and amendments	P
(b) Certificates/licenses	P
(c) Charters	P
(d) Examination reports	10
(e) Supervisory and outside audits	10
(f) Minutes	10
(3) Surety and Fidelity Bond Time Period After Expiration	10
(4) Member Certificate of Deposits Time Period After Payment	7
(5) Collections (Past Due Accounts)	
(a) Collection files (closed)	7
(b) Schedule of delinquent loans	2
(6) Currency Transactions and Related Material	
(a) Copies of drafts, checks or money orders drawn on the credit union or issued and payable to it	7
(b) Copies of checks, drafts or money orders drawn on the credit union or issued and payable by it	7
(c) Copies of records of each payment or transfer of funds, checks, investment securities or other money instruments of $10,000 of more outside the United States	7
(d) Copies of records of each item of $10,000 or more received from outside the United States	7
(e) Currency Transaction Reports (Form 4789)	7
(f) Deposit slips or credit tickets of all debits over $100,000	7
(g) Exemption statements	7
(h) Exemptions Master List	7
(i) Records of all extensions of credit over $10,000 unless the credit involves mortgage, home equity loans or refinancing	7
(j) Reports of international transportation of monetary instruments (Form 4790)	7
(k) Statements or ledgers showing all account activity	7
(7) Checking/Draft Accounts: Members	
(a) Checks/drafts paid	7
(b) Daily reports of overdrafts time period after overdraft is cleared	1
(c) Deposit tickets	7
(d) Individual members' account history ledgers	P
(e) Signature cards	P
(f) Stop-payment orders time period after issued	1
(g) Undelivered statements/dormant accounts log time period after date of last activity or contact with credit union	7
(h) Disclosures/Notices of check-holds	2
(8) Draft/Checking Accounts Held by Credit Unions	
(a) Certified checks/receipts	7
(b) Checks/drafts (canceled)	7
(c) Check/draft register	7
(d) Expense checks (canceled)	7
(e) Expense check register	7
(f) Expense vouchers or invoices	7
(g) Money orders and register	7
(9) Personnel Information	
(a) Disciplinary action records time period after terminated	7
(b) Earnings record	P
(c) Employee benefit plans	P
(d) Employee information reports	7
(e) Employee applications (not hired)	3
(f) Employee applications (hired) time period after terminated	7
(g) Employment eligibility verification	3
(h) Injury reports time period after report date	5
(i) Personnel files time period after terminated	7
(j) Unemployment compensation	7
(k) Training manuals and records	7
(l) Withholding authorization time period after terminated	8
(10) General Information	
(a) Applications for traveler's checks	7
(b) Change-of-address orders	2
(c) Paid bills, statements and invoices	7
(d) Vault records (except safe deposits).	1
(e) Wire transfer debit and credit entries	7
(f) Safe deposit access/entry tickets time period after entry date	7
(g) Safe keeping receipts	P
(h) Lease and contract	P
(11) Insurance Policy	P
(12) Investments	P
(13) Merged Credit Union Articles and Bylaws	P
(14) Loans	
(a) Loan documentation to directors	7
(b) Business loan documentation time period after account closed	7
(c) Consumer loan documentation time period after payoff	7
(d) Real estate loans documentation time period after payoff	7
(e) Real estate related documents	
(i) HMDA-1	10
(ii) HUD-1	10
(iii) Good faith estimates time period after estimate	2
(15) Share Accounts	
(a) Membership and signature cards	P
(b) Individual share ledgers	P

R337-9-4. Reproductions.

Any credit union subject to this rule may cause records in its custody to be reproduced by the micro-photographic or other equivalent process. Any reproduction shall have the same force and effect as the original and shall be admissible into evidence as if it were the original.

R337-9-5. Consistency With Requirements of Other State or Federal Statute or Rule.

This rule will not preempt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

KEY: financial institutions, credit unions
1995 **7-1 -301(7)**
Notice of Continuation September 28, 2007

R339. Financial Institutions, Industrial Loan Corporations.
R339-4. Authority for Industrial Loan Corporations to Issue Subordinated Capital Notes or Debentures.
R339-4-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(8) and 7-1-301(13).

(2) This rule applies to all industrial loan corporations.

(3) This rule construes, applies, and elaborates on Department of Financial Institutions Rule R331-5 as it applies to industrial loan corporations in the issuance of subordinated capital notes or debentures.

R339-4-2. Definitions.

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule R339-6-3(1)(j).

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(5) "Control" means "control" as defined in Section 7-1-103.

(6) "Commissioner" means the Commissioner of Financial Institutions.

(7) "Department" means the Department of Financial Institutions.

(8) "Institution" means "institution" as defined by Section 7-1-103.

(9) "Parent" means any company which controls the industrial loan corporation.

(10) "Person" means "person" as defined in Section 7-1-103.

(11) "Other evidences of debt" means notes payable, bonds, subordinated capital notes or debentures, maturing within one year, mortgages payable, accrued interest payable, and all other debt obligations, but not including any evidences of debt which involve a full recourse commitment where the department can readily ascertain that the person making the commitment is fully able to honor the same.

(12) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(13) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(14) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(15) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan's board of directors.

R339-4-3. Authority to Issue Capital Notes or Debentures.

(1) Any industrial loan corporation may, with the approval of the stockholders owning two-thirds of the voting stock of the institution, or without the approval if it is authorized by its articles of incorporation, and if it has demonstrated sound performance and efficient management, apply to the commissioner for permission to issue convertible or non-convertible capital notes or debentures, subordinated to the claims of all certificates of deposit, deposits and savings accounts and all other creditors.

(2) The commissioner may grant approval for the issuance of subordinated capital notes or debentures in the amounts and under the terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions and conditions of Rule R331-5 issued by the department have been complied with; and

(b) The principal amount of the subordinated capital notes or debentures outstanding at any time shall not exceed 50% of the capital of the industrial loan corporation; and

(c) The new issue of subordinated capital notes or debentures have a weighted average maturity of not less than seven years; and

(d) Subordinated capital notes or debentures shall not be used as collateral for loans or extensions of credit made by the industrial loan corporation.

R339-4-4. Disclosure.

All subordinated capital notes or debentures issued by an industrial loan corporation shall have the following provisions made in the body of the note or debenture and these provisions shall be disclosed in either a bold face type or in a size of type which is larger than the type face used in the other provisions carried in the body of the note or debenture.

(1) This obligation is NOT insured by any agency of the United States or the state.

(2) This obligation is subordinated to the claims of all certificates of deposit, deposits and savings accounts and all other creditors.

(3) Subordinated capital notes or debentures shall not be used as collateral for loans made by the industrial loan corporation.

(4) Items (1) and (2) listed above shall be prominently disclosed in all advertising of capital notes or debentures.

R339-4-5. Use as Capital.

(1) The outstanding principal amount of subordinated capital notes or debentures not maturing within one year shall be added to the capital of the issuing industrial loan corporation for the purpose of determining the amount of "total capital" under the provisions of Sections 7-8-5(1) and 7-8-14 and Rule R339-6.

R339-4-6. Exception to the Limits on Amounts of Subordinated Capital Notes or Debentures which May be Issued.

Notwithstanding the limitations of Sections 3 and 5 above, subordinated capital notes or debentures assumed under a supervisory action or plan of reorganization pursuant to Sections 7-2-1 or 7-2-12, may, at the discretion of the commissioner:

(1) Exceed the 50% of capital of the industrial loan corporation limitation imposed by Sections 3(2)(b) above; or

(2) Include the outstanding principal amount of subordinated capital notes or debentures maturing within one year in the capital of the industrial loan corporation for the purpose of determining the amount of "total capital" under the provisions of Section 7-8-14 and Rule R339-6.

KEY: financial institutions
1995 7-1-301(8)(e)
Notice of Continuation September 24, 2007 7-1-301(13)

R339. Financial Institutions, Industrial Loan Corporations.
R339-6. Rule Clarifying Industrial Loan Corporation Investments.
R339-6-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(8), and construes and applies to Sections 7-8-13 and 7-8-14.

(2) This rule applies to industrial loan corporations and thrift institutions.

(3) This rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate pursuant to Sections 7-8-13 and 7-8-14.

R339-6-2. Definitions.

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule 339-6-3(1)(i), below.

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Contractual commitment to advance funds" means an obligation on the part of the industrial loan corporation to make payments, directly or indirectly, to a designated third party contingent upon a default by the industrial loan's customer in the performance of an obligation under the terms of that customer's contract with the third party or an obligation to guarantee or stand as surety for the benefit of a third party to the extent permitted by law. The term includes standby letters of credit, guarantees, puts and other similar arrangements. Undisbursed loan or lease funds and loan or lease commitments not yet drawn upon are not considered a contractual commitment to advance funds.

(6) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(7) "Control" means "control" as defined in Section 7-1-103.

(8) "Depository institution" means "depository institution" as defined in Section 7-1-103.

(9) "Industrial loan corporation" means "industrial loan corporation" as defined in Section 7-1-103.

(10) "Institution" means institution as defined in Section 7-1-103.

(11) "Investment grade securities" means marketable obligations in the form of a bond, note, debenture or preferred stock rated in one of the four highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

(12) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating industrial loan corporation, but not the originating industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(13) "Loans and extensions of credit" does not include:

(a) A receipt by an industrial loan corporation of a check deposited in or delivered to the industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the industrial loan corporation, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring industrial loan corporation;

(c) An endorsement or guarantee for the protection of an industrial loan corporation of any loan or other asset previously acquired by the industrial loan corporation in good faith or any indebtedness to an industrial loan corporation for the purpose of protecting the industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the industrial loan corporation;

(e) The giving of immediate credit to an industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(14) "Parent" means any company which controls the industrial loan corporation.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Prudent Investments" means any investment not expressly prohibited by law or rule and made in the exercise of judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(17) "Readily marketable government securities" means obligations in the form of a bond, bill, note or debenture issued or offered by any governmental agency, municipality or board which is rated in one of the four highest ratings of a nationally recognized rating service.

(18) "Real estate" means improved or unimproved real property.

(19) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to a designated third party on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the issuer's customer, or

(b) To make payment on account of any indebtedness undertaken by the issuer's customer, or

(c) To make payment on account of any default by the issuer's customer in the performance of an obligation.

(20) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(21) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(22) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(23) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan corporation's board of directors.

R339-6-3. Acceptable Investments for the Deposits and Other Funds of Industrial Loan Corporations.

(1) In the absence of a statute or rule to the contrary, an industrial loan corporation is unrestricted as to a percentage of its total capital being invested in the following:

(a) Cash, demand, or time deposits in a federally insured depository institution, or in deposits maintained directly with a federal reserve bank;

(b) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state or any of its political subdivisions;

(c) Any investment grade securities;

(d) Any securities purchased under agreements to resell;

(e) Leases, loans, or extensions of credit, whether unsecured or secured;

(f) Real estate contracts;

(g) Consumer and commercial installment sales contracts and security agreements;

(h) A subsidiary with the prior written approval of the commissioner upon finding that the subsidiary is primarily engaged in activities closely related to banking; or

(i) Such real estate as the industrial loan corporation may purchase at any sale, public or private, or which may be conveyed to the industrial loan corporation in satisfaction of or on account of a debt previously contracted in the conduct of its business upon which it had a mortgage, trust deed, judgment, assignment, lien or other claim; however:

(i) Any real estate acquired under this section shall be sold within two years after the date of acquisition;

(ii) If real estate acquired under this section is not sold within the two year period, it shall be charged off the books of the industrial loan corporation at the rate of 20% of the acquisition book value thereof each year commencing one year from the date of expiration of the two year period. The same shall be entirely charged off within five years from the expiration of the two year period.

(j) Any other investment with the prior written approval of the commissioner.

(2) An industrial loan corporation is restricted to 50% of its total capital at any one time being invested in the following:

Premises used in the conduct of the business which include real property and any interest therein, property such as furniture, fixtures, and equipment for use in carrying on its own business and the stock, bonds, debentures, or other obligations of any subsidiary or affiliate having as its exclusive activity the ownership and management of the property or interests.

(a) The amount invested in premises may exceed 50% of total capital upon application and finding by the commissioner that the additional investment is necessary to promote the viability and stability of the industrial loan corporation;

(b) If the use of any of the premises for the conduct of business of the thrift institution is discontinued, the industrial loan corporation shall consider the real property as an investment under the 10% of total capital limitation cited in Section (3) below.

(3) An industrial loan corporation is restricted to 10% of its total capital at any one time being invested in real estate other than real estate used in the premises in the conduct of the business or real estate purchased or conveyed on account of a debt previously contracted. Such limited investment by an industrial loan corporation may include real estate or participation interests in real estate whether in partnership, joint venture or participation interest in the real estate for the purpose of producing income or for inventory and sale or for improvement, including the erection of buildings on the real estate for sale or rental purposes, and the industrial loan corporation may hold, sell, lease, operate or otherwise exercise the rights of any owner of any property.

(4) An industrial loan corporation is restricted to an aggregate of 20% of its total capital at any time being invested in any other "prudent investments" not specifically mentioned above, in Rule R339-6-3(1) through (3); provided however, that the aggregate of investments in any form in any one person made pursuant to this section shall not exceed 10% of total capital.

KEY: financial institutions

1995	**7-1-301**
Notice of Continuation September 24, 2007	**7-8-13**
	7-8-14

R339. Financial Institutions, Industrial Loan Corporations.
R339-11. Discount Securities Brokerage Service by Industrial Loan Corporations.
R339-11-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service industrial loan corporations may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by industrial loan corporations, similar to the discount brokerage services allowed state chartered banks.

R339-11-2. Definitions.

"Discount brokerage" is the practice of executing securities transactions solely at the direction of an industrial loan customer but not providing that customer with any investment advice.

R339-11-3. Discount Brokerage Services.

An industrial loan corporation may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for industrial loan corporation customers and the industrial loan corporation shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The industrial loan corporation clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the industrial loan corporation;

(3) The transactions are without recourse;

(4) The industrial loan corporation makes no warranty as to the performance or quality of any security;

(5) The industrial loan corporation does not advise customers to make any particular investment;

(6) The industrial loan corporation's promotional material clearly explains the industrial loan corporation's limited role in the service; and

(7) The industrial loan corporation's promotional material clearly explains that the transactions are not federally insured.

KEY: financial institutions
December 2, 1997 7-1-301(3)
Notice of Continuation September 28, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(21) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(22) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(23) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. State Plan.

(1) As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the

requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

(2) The department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program, in effect January 1, 2007, which is incorporated by reference.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of

1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.

(4) The standards in the InterQual Criteria shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) Prior authorization is a utilization control process to verify that the client is eligible to receive the service and that the service is medically necessary. Prior authorization requirements are identified in Section I sub-section 9 of the Utah Medicaid Provider Manual. Additional prior authorization instructions for specific types of providers is found in Section II of the Medicaid Provider Manual. All necessary medical record documentation for prior approval must be submitted with the request. If the provider has not followed the prior authorization instructions and obtained prior authorization for a service identified in the Medicaid Provider Manual as requiring prior authorization, the Department shall not reimburse for the service.

(4) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(5) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(6) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F

are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

KEY: Medicaid
September 7, 2007 26-1-5
Notice of Continuation April 16, 2007 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-15. Residents Personal Needs Fund.
R414-15-1. Introduction and Authority.

(1) This policy ensures proper administration of the personal funds of a Medicaid client who is a resident in a long term care facility. The administrative payee is responsible for using the beneficiary's benefits in his best interest. Flat rate reimbursement shall not be charged to personal funds. The flat rate shall cover the services specified in Attachment 4.19-D, Section 400 of the State Plan.

(2) This rule is authorized by Section 26-1-5 and 42 CFR 442 and 447.

R414-15-2. Definitions.

The definitions in R414-1 apply to this rule.

R414-15-3. Facility Responsibilities.

(1) For residents who are Medicaid clients, the administration and management of a long term care facility (the facility) must provide the resident, next of kin, or legal guardian:

(a) a written statement at the time of admission explaining:

(i) the resident's rights regarding personal funds; and

(ii) a list of services included in the basic per diem rate;

(b) access to a written record of all financial transactions involving the individual resident funds;

(c) a written itemized statement quarterly of all financial transactions involving the individual resident funds upon written request; and

(d) all funds that were given to the facility for safekeeping, including interest, within 30 days of the resident's discharge.

(2) The facility must notify the Social Security Administration office to have a representative payee appointed for residents who do not have a legal guardian, representative payee, or other authorized individual to manage their personal needs funds.

(3) The facility must serve as a temporary representative payee for the resident until the representative payee is appointed.

(4) The facility must allow the resident to access his funds for at least one hour during business hours.

(5) Upon request, the facility must return funds to the resident from an outside interest-bearing account within one business day.

(6) The facility shall deposit all funds in excess of $50.00:

(a) within 15 calendar days of receipt of the money;

(b) in an interest-bearing account that clearly indicates that the facility's interest is only fiduciary; and

(c) in a federally insured savings institution.

(7) The facility may deposit the resident's Social Security check into the facility's bank account if the personal need portion of the resident's check is transferred to the resident's account on the same day.

(8) The facility must distribute monthly the interest from the resident's interest-bearing accounts by either:

(a) maintaining separate savings accounts for each resident; or

(b) prorating the amount individually if funds are combined in one account for all residents.

(9) The facility may keep up to $50.00 of the resident's money in a non-interest-bearing account that is readily accessible to the resident.

(10) The facility must give any benefits to the resident either personally or through the resident's personal need fund unless there is a written authorization from the resident or legal guardian to do otherwise. This includes resident entitlements from Social Security Supplemental Income, government and private pensions, Veterans Administration, and other similar entitlement programs.

(11) The facility must provide the estate executor or administrator of a deceased resident with a written accounting of the resident's personal funds within 30 days of the resident's death. If the resident has not had an executor or administrator appointed, the facility must provide the accounting to:

(a) the resident's next of kin, legal guardian, representative payee, or other person the resident designated to manage his personal financial affairs while he was living; and

(b) the District Court in the county where the resident died.

(12) If the facility sells or leases the business, it must:

(a) provide the buyer or lessee with a written statement of all of the residents' monies and properties being transferred;

(b) obtain a signed receipt from the new owner or lessee before the sale or lease is final; and

(c) provide each resident's legal guardian, representative payee, or other person the resident authorized to manage his personal funds, a written accounting of all funds held by the facility before any transfer of ownership. The new owner or lessee shall assume full liability for all residents' personal needs accounts.

(13) For medical or supplemental security income recipients, the facility must provide written notification to the resident and the Department ten days before the resident's funds are about to exceed the amount that would jeopardize his Medicaid eligibility.

(14) The facility must maintain the resident's personal funds for safekeeping if requested according to R414-15-4.

R414-15-4. Resident Personal Funds for Safekeeping.

The resident shall not be required to give his personal funds to the facility for safekeeping. If the resident (or legal guardian) requests this service of the facility, the request must be a written authorization.

KEY: medicaid
January 13, 1998 **26-1-5**
Notice of Continuation September 20, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60A. Drug Utilization Review Board.
R414-60A-1. Introduction and Authority.

(1) The Drug Utilization Review (DUR) Board aids in pharmacy policy oversight and drug utilization.

(2) The DUR Board is authorized under 42 CFR 456.716 and Sections 26-18-2, 3, and 102.

R414-60A-2. DUR Board Composition and Membership Requirements.

(1) The Director of the Division of Health Care Financing (DHCF) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DUR Board issues, and shall appoint the following groups of individuals to four-year terms on the DUR Board:

(a) Four physicians from recommendations received from the Utah Medical Association.

(b) One physician engaged in Academic Medicine.

(c) Three pharmacists from recommendations received from the Utah Pharmacy Association.

(d) One pharmacist engaged in Academic Pharmacy.

(e) One dentist from recommendations received from the Utah Dental Association.

(f) One individual from recommendations received from the Pharmaceutical Manufacturers Association (PhRMA).

(g) One consumer representative.

(2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the 12 board positions listed in Subsection R414-60A-2(1). Terms separated by more than an interruption of two months are not consecutive.

(b) If the Division does not receive recommendations to fill a vacant position within 30 days of a request, the Division may submit for consideration a list of potential candidates to an organization listed in Subsection R414-60A-2(1).

(c) If there are no willing nominees for appointment when an appointed term has expired, the DHCF Director may reappoint:

(i) physician members on the board to additional non-consecutive terms as needed;

(ii) pharmacist members on the board to additional non-consecutive terms as needed; and

(iii) a dentist, PhRMA member, or consumer member to additional non-consecutive one-year terms as needed.

(3) Notwithstanding the requirements in Subsection R414-60A-2(1), the Director shall adjust the length of terms upon appointment so that one-half of the DUR Board is appointed every two years.

(4) The DUR Board shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the board.

(5) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(6) The DUR Board shall be managed by a non-voting board manager appointed from the pharmacy group within DHCF.

(7) Other individuals of the DHCF pharmacy group are non-voting ex-officio advisory members of the DUR Board.

R414-60A-3. Responsibilities and Functions.

(1) The DUR Board shall meet monthly in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board may elect to not meet in a given month if circumstances do not require a meeting. The board shall meet at least ten times per year.

(3) The DUR Board chairperson shall conduct all meetings. The DUR Board manager shall conduct meetings if the chairperson is not present.

(4) In accordance with Section 26-18-105, notice shall be given for a DUR Board meeting in which prior authorization criteria is considered.

(5) The DUR Board manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DUR Board business, notify DHCF when vacancies occur, provide meeting notices, and coordinate functions between the DUR Board and DHCF.

(6) DHCF shall rely upon the DUR Board to carry out the Division's federal and state responsibilities for the Medicaid drug program to address the following issues:

(a) Adverse reactions to drugs.

(b) Therapeutic appropriateness.

(c) Overutilization and underutilization.

(d) Appropriate use of generic drugs.

(e) Therapeutic duplication.

(f) Drug-disease contraindications.

(g) Drug-drug interactions.

(h) Incorrect drug dosage and duration of treatment.

(i) Drug allergy interactions.

(j) Clinical abuse and misuse.

(k) Identification and reduction of the frequency of patterns of fraud, abuse, and gross overuse.

(l) Inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(m) Prior Authorization criteria.

(7) The DUR Board may consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics (P&T) Committee.

KEY: Medicaid
September 7, 2007 **26-18-3**
26-1-5

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 prescriber must write "medically necessary -- dispense as written" on the prescription and have justification in the patient's medical record substantiating the medical necessity of a non-preferred drug in order for this to be reimbursed.

(3) The preferred drug or drugs are covered without the notation required in (2).

R414-60B-5. P&T Committee Composition and Membership Requirements.

(1) There is created a Pharmacy and Therapeutics Committee within DHCF. 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 PadT 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) 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 applicable law.

(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. Clinical and Cost-Related Factors.

The P&T Committee shall base its determinations on the following clinical and cost-related factors as established by the Drug Utilization Review Board:

(1) If clinical and therapeutic considerations are substantially equal, then the P&T Committee shall recommend to DHCF that it consider only cost.

(2) If cost information available to the P&T Committee indicates that costs are substantially the same, then the P&T Committee makes its recommendation to DHCF based on the clinical and therapeutic profiles of the drugs.

(3) In making its recommendations to DHCF, the P&T Committee may also consider whether the clinical, therapeutic effects, and medical necessity requirements justify the cost differential between drugs within a therapeutic class.

KEY: Medicaid
September 21, 2007 **26-18-2.4**
26-18-3
26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity. This is used in the FRV calculation.

(16) "Medicaid operational bed capacity" means the number of beds remaining when the weighted Medicaid banked beds are subtracted from the facility's Medicaid certified beds.

(17) "Weighted Medicaid banked beds" means the facility's Medicaid certified beds divided by the facility's total licensed beds, which quotient is then multiplied by the facility's banked beds, rounded-down to the nearest whole number. For example, assume there is a facility with 180 licensed beds, 60 banked beds, and 156 Medicaid certified beds. The 156 Medicaid certified beds are divided by 180 total licensed beds, which equals 0.87, which is then multiplied by 60 banked beds, which equals 52 weighted Medicaid banked beds. The Medicaid operational bed capacity then becomes 156 Medicaid certified beds minus 52 weighted Medicaid banked beds, which equals 104 Medicaid operational beds.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete

MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Property costs shall be calculated once per year, each July 1, and reimbursed as a component of the facility rate based on an FRV System.

(a) Under this FRV system, the Department reimburses a facility based on the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's initial year of construction.

(ii) The age of each facility is adjusted each July 1 to make the facility one year older.

(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, as reported on the FRV Data Report, provided there is sufficient documentation to support the historical changes.

(A) If a facility adds new beds, these new beds are averaged into the age of the original beds to arrive at the facility's age.

(B) If a facility completed a major renovation (defined as a project with capitalized cost equal to or greater than $500 per bed) or replacement project, the cost of the project is represented by an equivalent number of new beds.

(I) The renovation or replacement project must have been completed during a 24-month period and reported on an FRV Data Report for the reporting period used for the July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.

(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.

(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.

(b) A nursing facility's fair rental value per diem is calculated as follows:

As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.

(i) The buildings and fixtures value per licensed bed is $50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this $50,000 is added 10% ($5,000) for land and 10% ($5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. Therefore, nursing facilities shall not be depreciated to an amount less than 47.50 percent or 100 percent minus (1.50 percent times 35) of the newly calculated bed value. There shall be no recapture of depreciation.

(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of three percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than nine percent or more than 12 percent.

(iii) The facility's annual FRV is divided by the greater of:

(A) the facility's annualized actual resident days during the cost reporting period; and

(B) Seventy-five percent of the annualized Medicaid operational bed capacity of the facility; however, the Department recognizes banked beds only as reported in the most recent FRV Data Report. For example, banked beds as reported on the FRV Data Report for the period ending February 28th/29th would be incorporated in the following July 1 FRV calculation.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than $8 and no greater than $22 per patient day.

(c) A pass-through component of the rate is applied and is calculated as follows:

(i) The nursing facility's per diem property tax and property insurance cost is determined by dividing the sum of the facility's allowable property tax and property insurance costs, as reported in the most recent FCP or FRV Data Report, as applicable, by the facility's actual total patient days.

(ii) For a newly constructed or newly certified facility that has not submitted an FCP or FRV Data Report that would be used in the rate period, the per diem property tax and property insurance is the state average daily property tax and property insurance cost of all facilities.

(8) Newly constructed or newly certified facilities' case mix component of the rate shall be paid using the average case mix index. This average case mix index remains in place until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2). At the following quarter's rate setting, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(7).

(9) An existing facility acquired by a new owner will

continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter.

(a) The subsequent quarter's case mix index is established using the prior ownership facility MDS data until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2).

(b) The property component is calculated for the facility at the beginning of the next state fiscal year, as noted in R414-504-3(7).

(10) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(11) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(12) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(13) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(14) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within ten business days to requests for information relating to desk review or audit findings relating to the facility's submitted FCP or FRV Data Report.

(b) For ongoing operations, the Department will provide a 30-day notice before withholding payments. The Department may immediately withhold Title XIX payments without giving 30-days notice if it believes the delay may jeopardize the recovery. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

R414-504-4. Quality Improvement Incentive.

(1) Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of $ 1,000,000 shall be set aside annually to reimburse non-ICF/MR facilities that have a quality improvement plan which includes the involvement of residents and family, a process of assessing and measuring that plan, quarterly customer satisfaction surveys conducted by an independent third-party, and have no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent re-certification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of "immediate jeopardy" or

higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

(a) A facility that receives a substandard quality of care level F, H, I, J, K, or L during the July 1 through June 30 incentive period is eligible for only 50% of the possible payout. A facility receiving substandard quality of care level F, H, I, J, K, or L in more than one survey during the July 1 through June 30 incentive period is ineligible for payout under this incentive.

(2) In addition to the above incentive, funds in the amount of $3,406,000 shall be set aside in state fiscal year 2008 for use in state fiscal year 2008 for the following quality improvement initiatives:

(a) Incentive for facilities to purchase or enhance clinical information systems, which incorporate advanced technology into improved patient care, such as better integration, capture of more information at the point of care, more automated reminders, etc. Qualifying Medicaid providers may receive up to $108.02 for software and up to $90 for hardware for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. Qualifying criteria include the following:

(i) Software:

(A) A facility must purchase or lease a new or enhance its existing clinical information system. The software component incorporates advanced technology into improved patient care that includes better integration, capture of more information at the point of care, more automated reminders, etc. The following clinical tracking minimum requirements must all be included in the software:

(I) Care plans;

(II) Current condition(s);

(III) Medical order(s);

(IV) Activities of Daily Living;

(V) Medication Administration Records;

(VI) Timing of medication(s);

(VII) Medical notes; and

(VIII) Point of care data tracking.

(B) A facility, with its application, must submit a detailed description of the functionality of the software, denoting each of the minimum clinical tracking requirements.

(C) A facility must purchase or lease and implement the software on or after July 1, 2005, and no later than June 8, 2008.

(D) A facility, with its application, must submit its software, software installation and training costs, and detailed supporting documentation. These costs must be separate from hardware related costs.

(E) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(ii) Hardware:

(A) The purchase or lease of hardware must facilitate the tracking of patient care and integrate the collection of data into the facility's clinical information system software.

(B) A facility, with its application, must submit a detailed description of the functionality of the hardware and its integration with the clinical information system software.

(C) A facility must purchase or lease and implement the hardware on or after July 1, 2005, and no later than June 8, 2008.

(D) A facility, with its application, must submit its hardware, hardware installation and training costs, and detailed supporting documentation. These costs must be separate from software related costs.

(E) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(iii) A facility must qualify for the software incentive and the hardware incentive separately. Thus, a facility must provide separate supporting documentation for each incentive component.

(iv) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(b) Incentive for facilities to improve their heating, ventilating, and air conditioning systems. Qualifying Medicaid providers may receive up to $162 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. Qualifying criteria include the following:

(i) A facility must purchase a new or enhance its existing heating, ventilating, and air conditioning system (HVAC).

(ii) A facility, with its application, must submit a detailed description of the change.

(iii) The HVAC system must be purchased and installed on or after July 1, 2005, and no later than June 8, 2008.

(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(v) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(c) Incentive to encourage facilities to use innovative means to improve the residents' dining experience. Qualifying Medicaid providers may receive up to $111 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. Qualifying criteria include the following:

(i) A facility must implement changes to its dining program to improve the resident's dining experience. These changes may include meal ordering, dining times or hours, atmosphere, more food choices, etc.

(ii) A facility, with its application, must submit a detailed description of the changes.

(iii) The changes to the dining program must be made on or after July 1, 2006, and no later than June 8, 2008. A facility must submit invoices or similar documentation to show the date of purchase or implementation.

(iv) A facility, with its application, must submit invoices, receipts, or other documentation, to show proof of payment for the incremental costs that resulted from the dining program changes.

(v) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(d) Applications and all supporting documentation must be received by June 8, 2008, for consideration.

(e) A facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MR s based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component

calculated by the Fair Rental Value system pursuant to R414-504-3.

(2) Funds in the amount of $200,000 shall be set aside annually for incentives to facilities that have a meaningful quality improvement plan and have demonstrated a means to measure that plan. In addition, the facility must have had no violations, as determined by the Department, that are at an immediate jeopardy level at the most recent re-certification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of immediate jeopardy or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the Department shall distribute the remaining incentive payments to all qualifying facilities.

KEY: Medicaid
September 7, 2007 **26-1-5**
26-18-3
26-35a

R432. Health, Health Systems Improvement, Licensing.
R432-150. Nursing Care Facility.
R432-150-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-2. Purpose.

The purpose of R432-150 is to establish health and safety standards to provide for the physical and psycho-social well being of individuals receiving services in nursing care facilities.

R432-150-3. Construction Standard.

Nursing Care Facilities shall be constructed and maintained in accordance with R432-5, Nursing Facility Construction.

R432-150-4. Definitions.

(1) The definitions found in R432-1-3 apply to this rule.

(2) The following definitions apply to nursing care facilities.

(a) "Skilled Nursing Care" means a level of care that provides 24 hour inpatient care to residents who need licensed nursing supervision. The complexity of the prescribed services must be performed by or under the close supervision of licensed health care personnel.

(b) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.

(c) "Medically-related Social Services" means assistance provided by the facility licensed social worker to maintain or improve each resident's ability to control everyday physical, mental and psycho-social needs.

(d) "Nurse's Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.

(f) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning for the convenience of staff, for punishment or discipline, or as a substitute for direct resident care.

(g) "Physical Restraint" means any physical method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily which restricts the resident's freedom of movement or normal access to his own body.

(h) "Significant Change" means a major change in a resident's status that impacts on more than one area of the resident's health status.

(i) "Therapeutic Leave" means leave pertaining to medical treatment planned and implemented to attain an objective that is specified in the individual plan of care.

(j) "Licensed Practitioner" means a health care practitioner whose license allows assessment, treatment, or prescribing practices within the scope of the license and established protocols.

(k) "Governing Body" means the board of trustees, owner, person or persons designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct and functioning of the health care facility or agency.

(l) "Nursing Staff" means nurses aides that are in the process of becoming certified, certified nurses aides, and those individuals that are licensed (e.g. licensed practical nurses and registered nurses) to provide nursing care in the State of Utah.

(m) "Licensed Practical Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(11).

(n) "Registered Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(12).

(o) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

(p) "Dining Assistant" means an individual unrelated to a resident or patient who meets the training requirements defined in this rule to assist nursing care residents with eating and drinking.

R432-150-5. Scope of Services.

(1) An intermediate level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

(b) The facility shall provide at least one registered nurse either by direct employ or by contract to provide direction to nursing services.

(c) The facility may employ a licensed practical nurse to act as the health services supervisor in lieu of a director of nursing provided that a registered nurse consultant meets regularly with the health services supervisor.

(d) The facility shall provide at least the following:

(i) medical supervision;

(ii) dietary services;

(iii) social services; and

(iv) recreational therapy.

(e) The following services shall be provided as required in the resident care plan:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech therapy;

(iv) respiratory therapy; and

(v) other therapies.

(2) A skilled level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

A licensed nurse shall serve as charge nurse on each shift.

(b) The facility shall employ a registered nurse for at least eight consecutive hours a day, seven days a week.

(c) The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis. A person may not concurrently serve as the director of nursing and as a charge nurse.

(d) A skilled level of care facility shall provide services to residents that preserve current capabilities and prevent further deterioration including the following:

(i) medical supervision;

(ii) dietary services;

(iii) physical therapy;

(iv) social services;

(v) recreation therapy;

(vi) dental services; and

(vii) pharmacy services;

(e) The facility shall provide the following services as required by the resident care plan:

(i) respiratory therapy,

(ii) occupational therapy, and

(iii) speech therapy.

(3) Respite services may be provided in nursing care facilities.

(a) The purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. A respite stay which exceeds 14 days is a nursing facility admission subject to the requirements of this rule applicable to non-respite residents.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, the case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) a Level 1 Preadmission Screening upon the persons admission for respite services; and

(ii) a service agreement to serve as the plan of care, which shall identify the prescribed medications, physician treatment orders, need for assistance with activities of daily living, and diet orders.

(f) The facility must have written respite care policies and procedures that are available to staff. Respite care policies and procedures must address:

(i) medication administration;

(ii) notification of a responsible party in the case of an emergency;

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

(vii) training and in-service requirement for employees; and

(viii) handling personal funds.

(g) Persons receiving respite services must receive a copy of the Resident Rights documents upon admission.

(h) The facility must maintain a record for each person receiving respite services. The record shall contain the following:

(i) the service agreement;

(ii) resident demographic information;

(iii) nursing notes;

(iv) physician treatment orders;

(v) daily staff notes;

(vi) accident and injury reports,

(vii) a post service summary, and

(viii) an advanced directive, if available.

(i) Retention and storage of respite records shall comply with R432-150-25(3).

(j) Confidentiality and release of information shall comply with R432-150-25(4).

(4) Hospice care may only be arranged and provided by a licensed hospice agency in accordance with R432-750. The facility shall be licensed as a hospice if it provides hospice care.

(5) A nursing care facility may provide terminal care.

R432-150-6. Adult Day Care Services.

(1) Nursing Care Facilities may offer adult day care and are not required to obtain a license from Utah Department of Human Services. If a facility provides adult day care, it shall submit policies and procedures for Department approval.

(2) In this section:

(a) "Adult Day Care" means nonresidential care and supervision for at least four but less than 24 hours per day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(b) "Consumer" means a functionally impaired adult admitted to or being evaluated for admission in a facility offering adult day care.

(3) The governing board shall designate a qualified Director to be responsible for the day-to-day program operation.

(4) The Director shall maintain written records on-site for each consumer and staff person, which shall include the following:

(a.) demographic information;

(b.) an emergency contact with name, address and telephone number;

(c.) consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) signed consumer agreement and service plan.

(e) employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The facility shall have a written eligibility, admission, and discharge policy that includes the following:

(a) intake process;

(b) notification of responsible party;

(c) reasons for admission refusal, including the Director's written, signed statement;

(d) resident rights notification; and

(e) reason for discharge or dismissal.

(6) Before a facility admits a consumer, it must first assess, in writing, the consumer's current health and medical history, immunizations, legal status, and social psychological factors to determine whether the consumer may be placed in the program.

(7) The Director or designee, the responsible party, and the consumer if competent shall develop a written, signed consumer agreement. The agreement shall include:

(a) rules of the program;

(b) services to be provided and cost of service, including refund policy; and

(c) arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) Within three days of admission to the program, the Director or designee, shall develop an individual consumer service plan that the facility shall implement for the consumer. The service plan shall include the specification of daily activities and services. The Director or designees shall reevaluate, and modify if necessary, the consumer's service plan at least every six months.

(9) The facility shall make written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. The facility shall document the actions taken, including actions taken to avoid future incident or injury, and keep the reports on file. The Director shall notify and review the incident or injury report with the responsible party no later than when the consumer is picked up at the end of the day.

(10) The facility shall post and implement a daily activity schedule.

(11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of

indoor floor space, excluding hallways, office, storage, kitchens, and bathrooms, per consumer designated for adult day care during program operational hours.

(13) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(14) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(15) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff member shall provide continuous, direct supervision.

(b) For each eight additional consumers, or fraction thereof, the facility shall provide an additional staff member to provide continuous, direct supervision. For example, ten consumers require two staff members.

(c) If one-half or more of the consumers is diagnosed by a physician's assessment with Alzheimer's or other dementia, the ratio shall be one staff for each six consumers, or fraction thereof.

R432-150-7. Governing Body.

The facility must have a governing body, or designated persons functioning as a governing body.

(1) The governing body must establish and implement policies regarding the management and operation of the facility.

(2) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of resident rights.

(3) The governing body must appoint the administrator in writing.

R432-150-8. Administrator.

(1) The administrator must comply with the following requirements.

(a) The administrator must be licensed as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15.

(b) The administrator's license shall be posted in a place readily visible to the public.

(c) The administrator may supervise no more than one nursing care facility.

(d) The administrator shall have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(2) The administrator's responsibilities must be defined in a written job description on file in the facility. The job description shall include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility;

(c) respond to recommendations made by the quality assurance committee;

(d) implement policies and procedures governing the operation of all functions of the facility; and

(e) review all incident and accident reports and document the action taken or reason for no action.

(3) The administrator shall ensure that facility policies and procedures reflect current facility practice, and are revised and updated as needed.

(4) The administrator shall secure and update contracts for required professional services not provided directly by the facility.

(a) Contracts shall document the following:

(i) the effective and expiration date of contract;

(ii) a description of goods or services provided by the contractor to the facility;

(iii) a statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) a provision to terminate the contract with advance notice;

(v) the financial terms of the contract;

(vi) a copy of the business or professional license of the contractor; and

(vii) a provision to report findings, observations, and recommendations to the administrator on a regular basis.

(b) Contracts shall be signed, dated and maintained for review by the Department.

(5) The administrator shall maintain a written transfer agreement with one or more hospitals to facilitate the transfer of residents and essential resident information. The transfer agreement must include:

(a) criteria for transfer;

(b) method of transfer;

(c) transfer of information needed for proper care and treatment of the resident transferred;

(d) security and accountability of personal property of the resident transferred;

(e) proper notification of hospital and responsible person before transfer;

(f) the facility responsible for resident care during the transfer; and

(g) resident confidentiality.

R432-150-9. Medical Director.

(1) The administrator must retain by formal agreement a licensed physician to serve as medical director or advisory physician according to resident and facility needs.

(2) The medical director or advisory physician shall:

(a) be responsible for the development of resident care policies and procedures including the delineation of responsibilities of attending physicians;

(b) review current resident care policies and procedures with the administrator;

(c) serve as a liaison between resident physicians and the administrator;

(d) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees and;

(e) act as consultant to the director of nursing or the health services supervisor in matters relating to resident care policies.

R432-150-10. Staff and Personnel.

(1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(a) The administrator, director of nursing or health services supervisor, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) All personnel must have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(c) All personnel must be licensed, certified or

registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(2) The facility shall maintain staffing records, including employee performance evaluations, for the preceding 12 months.

(3) The facility shall establish a personnel health program through written personnel health policies and procedures.

(4) The facility shall complete a health evaluation and inventory for each employee upon hire.

(a) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(b) The health inventory shall include health screening and immunization components of the employee's personnel health program.

(c) Infection control shall include staff immunization as necessary to prevent the spread of disease.

(d) Employee skin testing and follow up for tuberculosis shall be done in accordance with R388-804. Tuberculosis Control Rule.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(5) The facility shall plan and document in-service training for all personnel.

(a) The following topics shall be addressed at least annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for all employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) training in Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(vii) proper use and documentation of restraints;

(viii) resident rights;

(ix) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(x) confidentiality of resident information.

(6) Any person who provides nursing care, including nurse aides and orderlies, must work under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program.

(b) The facility shall verify through the nurse aide registry prior to employment that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation. If such a verified report exists, the facility may not hire the applicant.

(c) If an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(7) The facility may utilize volunteers in the daily activities of the facility provided that volunteers are not included in the facility's staffing plan in lieu of facility employees.

(a) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(b) Volunteers who provide personal care to residents shall be screened according to facility policy and under the direct supervision of a qualified employee.

(8) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for making the report.

R432-150-11. Quality Assurance.

(1) The administrator must implement a well-defined quality assurance plan designed to improve resident care. The plan must:

(a) include a system for the collection of data indicators;

(b) include an incident reporting system to identify problems, concerns, and opportunities for improvement of resident care;

(c) implement a system to assess identified problems, concerns and opportunities for improvement; and

(d) implement actions that are designed to eliminate identified problems and improve resident care.

(2) The plan must include a quality assurance committee that functions as follows:

(a) documents committee meeting minutes including all corrective actions and results;

(b) conducts quarterly meetings and reports findings, concerns and actions to the administrator and governing body; and

(c) coordinates input of data indicators from all provided services and other departments as determined by the resident plan of care and facility scope of services.

(3) Incident and accident reports shall:

(a) be available for Department review;

(b) be numbered and logged in a manner to account for all filed reports; and

(c) have space for written comments by the administrator or medical director.

(4) Infection reporting must be integrated into the quality assurance plan and must be reported to the Department in accordance with R386-702, Communicable Disease Rule.

R432-150-12. Resident Rights.

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current

total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds $100, the facility must deposit all money in excess of $100 in an interest-bearing account.

(f) Upon annual license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been

entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department. (7) Facility smoking policies must comply with the Utah Indoor Clean Air Act, R392-510, 1995 and the rules adopted there under and Section 31-4.4 of the 1994 Life Safety Code.

R432-150-13. Resident Assessment.

(1) The facility shall upon admission obtain physician orders for the resident's immediate care.

(2) The facility must complete a comprehensive assessment of each resident's needs including a description of the resident's capability to perform daily life functions and significant impairments in functional capacity.

(a) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psycho social status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status; and

(xiii) drug therapy.

(b) The facility must complete the initial assessment within 14 calendar days of admission and any revisions to the initial assessment within 21 calendar days of admission.

(c) A significant change in a resident's physical or mental condition requires an interdisciplinary team review and may require the facility to complete a new assessment within 14 calendar days of the condition change.

(d) At a minimum, the facility must complete three quarterly reviews and one full assessment in each 12 month period.

(e) The facility shall use the results of the assessment to develop, review, and revise the resident's comprehensive care plan.

(3) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(4) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psycho-social needs as identified in the comprehensive assessment.

(a) The comprehensive care plan shall be:

(i) developed within seven days after completion of the comprehensive assessment;

(ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or guardian, to the extent practicable; and

(iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(b) The services provided or arranged by the facility shall meet professional standards of quality and be provided by qualified persons in accordance with the resident's written care plan.

(5) The facility must prepare at the time of discharge a final summary of the resident's status to include items in R432-150-13(2)(a). The final summary shall be available for release to authorized persons and agencies, with the consent of the resident or representative.

(a) The final summary must include a post-discharge care plan developed with the participation of the resident and resident's family or guardian.

(b) If the discharge of the resident is based on the inability of the facility to meet the resident's needs, the final summary must contain a detailed explanation of why the resident's needs could not be met.

R432-150-14. Restraint Policy.

(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.

(2) The facility must have written policies and procedures regarding the proper use of restraints.

(a) Physical and chemical restraints may only be used to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(b) Physical and chemical restraints must not be used as substitutes for direct resident care, activities, or other services.

(c) Restraints must not unduly hinder evacuation of the resident in the event of fire or other emergency.

(d) If use of a physical or a chemical restraint is implemented, the facility must inform the resident, next of kin, and the legally designated representative of the reasons for the restraint, the circumstances under which the restraint shall be discontinued, and the hazards of the restraint, including potential physical side effects.

(3) The facility must develop and implement policies and procedures that govern the use of physical and chemical restraints. These policies shall promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use.

(4) Physical and chemical restraint policies must incorporate and address at least the following:

(a) resident assessment criteria which includes:

(i) appropriateness of use;

(ii) procedures for use;

(iii) purpose and nature of the restraint;

(iv) less restrictive alternatives prior to the use of more restrictive measures; and

(v) behavior management and modification protocols including possible alterations to the physical environment;

(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used; and

(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Emergency use of physical and chemical restraints must comply with the following:

(a) A physician, a licensed health practitioner, the director of nursing, or the health services supervisor must authorize the emergency use of restraints.

(b) The facility must notify the attending physician as soon as possible, but at least within 24 hours of the application of the restraints.

(c) The facility must notify the director of nursing or health services supervisor no later than the beginning of the next day shift of the application of the restraints.

(d) The facility must document in the resident's record the circumstances necessitating emergency use of the restraint and the resident's response.

(6) Physical restraints must be authorized in writing by

a licensed practitioner and incorporated into the resident's plan of care.

(a) The interdisciplinary team must review and document the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner.

(b) The resident care plan must indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.

(c) Staff application of physical restraints must ensure minimal discomfort to the resident and allow sufficient body movement for proper circulation.

(d) Staff application of physical restraints must not cause injury or allow a potential for injury.

(e) Leather restraints, straight jackets, or locked restraints are prohibited.

(7) Chemical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program.

(a) The interdisciplinary team must review and document the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner.

(b) The facility must monitor each resident receiving chemical restraints for adverse effects that significantly hinder verbal, emotional, or physical abilities.

(c) Any medication given to a resident must be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(d) The facility must initiate drug holidays in accordance with R432-150-15(13)(b).

(8) Facility policy must include criteria for admission and retention of residents who require behavior management programs.

R432-150-15. Quality of Care.

(1) The facility must provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psycho-social well-being, in accordance with the comprehensive assessment and care plan.

(a) Necessary care and services include the resident's ability to:

(i) bathe, dress, and groom;

(ii) transfer and ambulate;

(iii) use the toilet;

(iv) eat; and

(v) use speech, language, or other functional communication systems.

(b) Based on the resident's comprehensive assessment, the facility must ensure that:

(i) each resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) each resident is given the treatment and services to maintain or improve his abilities; and

(iii) a resident who is unable to carry out these functions receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) The facility must assist residents in scheduling appointments and arranging transportation for vision and hearing care as needed.

(3) The facility's comprehensive assessment of a resident must include an assessment of pressure sores. The facility must ensure that:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) The facility's comprehensive assessment of the resident must include an assessment of incontinence. The facility must ensure that:

(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections; and

(d) a licensed nurse must complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) The facility must assess each resident to ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) The facility must ensure that the psycho-social function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psycho-social function was unavoidable. The facility shall ensure that:

(a) a resident who displays psycho-social adjustment difficulty receives treatment and services to achieve as much re-motivation and reorientation as possible; and

(b) a resident whose assessment does not reveal a psycho-social adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) The facility must assess alternative feeding methods to ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) The facility must maintain the resident environment to be as free of accident hazards as is possible.

(9) The facility must provide each resident with adequate supervision and assistive devices to prevent accidents.

(10) Each resident's comprehensive assessment must include an assessment on nutritional status. The facility must ensure that each resident:

(a) maintains acceptable nutritional status parameters, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) receives a therapeutic diet when there is a nutritional problem.

(11) The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) The facility must ensure that residents receive proper treatment and care for the following special services:
(a) injections;
(b) parenteral and enteral fluids;
(c) colostomy, ureterostomy, or ileostomy care;
(d) tracheostomy care;
(e) tracheal suctioning;
(f) respiratory care;
(g) foot care; and
(h) prostheses care.
(13) Each resident's drug regimen must be free from unnecessary drugs and the facility shall ensure that:
(a) residents who have not used anti-psychotic drugs are not given these drugs unless anti-psychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and
(b) residents who use anti-psychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.
(14) The quality assurance committee must monitor medication errors to ensure that:
(a) the facility does not have medication error rates of five percent or greater;
(b) residents are free of any significant medication errors.

R432-150-16. Physician Services.
(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.
(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.
(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.
(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.
(3) The physician must:
(a) review the resident's total program of care, including medications and treatments, at each visit;
(b) write, sign, and date progress notes at each visit;
(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and
(d) sign all orders.
(4) Physician visits must conform to the following:
(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.
(b) Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.
(c) Physician visits must be completed within ten days of the date the visit is required.
(d) Except as required by R432-150-16(4)(f), all required physician visits must be made by the physician.
(e) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.
(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

R432-150-17. Social Services.
Each nursing care facility must provide or arrange for medical social services sufficient to meet the needs of the residents. Social services must be under the direction of a therapist licensed in accordance with Title 58 Chapter 60 of the Mental Health Practice Act.

R432-150-18. Laboratory Services.
(1) The facility must provide laboratory services in accordance with the size and needs of the facility.
(2) Laboratory services must comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-150-19. Pharmacy Services.
(1) The facility must provide or obtain by contract routine and emergency drugs, biologicals, and pharmaceutical services to meet resident needs.
(2) The facility must employ or obtain the services of a licensed pharmacist who:
(a) provides consultation on all aspects of pharmacy services in the facility;
(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and
(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.
(3) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.
(a) The pharmacist must report any irregularities to the attending physician and the director of nursing or health services supervisor.
(b) The physician and the director of Nursing or health services supervisor must indicate acceptance or rejection of the report and document any action taken.
(4) Pharmacy personnel must ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.
(5) The facility must store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-19 (6)(e), and permit only authorized personnel to have access to the keys.
(a) The facility must provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.
(b) Non-medication materials that are poisonous or caustic may not be stored with medications.
(c) Containers must be clearly labeled.
(d) Medication intended for internal use shall be stored separately from medication intended for external use.
(e) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.
(f) Refrigerated medications shall be maintained within 36 and 46 degrees F.
(6) The facility must maintain an emergency drug supply.
(a) Emergency drug containers shall be sealed to prevent unauthorized use.
(b) Contents of the emergency drug supply must be listed on the outside of the container and the use of contents shall be documented by the nursing staff.
(c) The emergency drug supply shall be stored and

located for access by the nursing staff.

(d) The pharmacist must inventory the emergency drug supply monthly.

(e) Used or outdated items shall be replaced within 72 hours by the pharmacist.

(7) The pharmacy must dispense and the facility must ensure that necessary drugs and biologicals are provided on a timely basis.

(8) The facility must limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) Drug references must be available for all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) Drugs may be sent with the resident upon discharge if so ordered by the discharging physician provided that:

(a) such drugs are released in compliance R156-17a-619; and

(b) a record of the drugs sent with the resident is documented in the resident's health record.

(11) Disposal of controlled substances must be in accordance with the Pharmacy Practice Act.

R432-150-20. Recreation Therapy.

(1) The facility shall provide for an ongoing program of individual and group activities and therapeutic interventions designed to meet the interests, and attain or maintain the highest practicable physical, mental, and psycho-social well-being of each resident in accordance with the comprehensive assessment.

(a) Recreation therapy shall be provided in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

(b) The recreation therapy staff must:

(i) develop monthly activity calendars for residents activities; and

(ii) post the calendar in a prominent location to be available to residents, staff, and visitors.

(2) Each facility must provide sufficient space and a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

(3) Storage must be provided for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-150-21. Pet Policy.

(1) Each facility must develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee must determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free, and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets are not permitted in any area where their presence would create a health or safety risk.

R432-150-22. Admission, Transfer, and Discharge.

(1) Each facility must develop written admission, transfer and discharge policies and make these policies available to the public upon request. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility is endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(f) The facility ceases to operate.

(2) The facility must document resident transfers or discharges under any of the circumstances specified in R432-150-22(1)(a) through (f), in the resident's medical record. The transfer or discharge documentation must be made by:

(a) the resident's physician if transfer or discharge is necessary under R432-150-22(1)(a) and (b);

(b) a physician if transfer or discharge is necessary under R432-150-22(1)(c) and(d).

(3) Prior to the transfer or discharge of a resident, the facility must:

(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in R432-150-22(5).

(4) Except when specified in R432-150-22(4)(a), the notice of transfer or discharge required under R432-150-22(2), must be made by the facility at least 30 days before the resident is transferred or discharged.

(5) Notice may be made as soon as practicable before transfer or discharge if:

(a) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;

(b) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(c) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) a resident has not resided in the facility for 30 days.

(6) The contents of the written transfer or discharge notice must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged; and

(d) the name, address, and telephone number of the State and local Long Term Care Ombudsman programs.

(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) The facility must provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.

(8) Notice of resident bed-hold policy, transfer and re-admission must be documented in the resident file.

(a) Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written notification and information to the resident and a family member or legal representative that specifies:

(i) the facility's policies regarding bed-hold periods

permitting a resident to return; and

(ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.

(b) At the time of transfer of a resident to a hospital or for therapeutic leave, the facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.

(c) If transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(d) The facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(9) The facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of pay source.

(10) The facility must have in effect a written transfer agreement with one or more hospitals to ensure that:

(a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and

(c) security and accountability of personal property of the individual transferred is maintained.

R432-150-23. Ancillary Health Services.

(1) If the nursing care facility provides its own radiology services, these facility must comply with R432-100-21, Radiology Services, in the General Acute Hospital Rule.

(2) A facility that provides specialized rehabilitative services may offer these services either directly or through agreements with outside agencies or qualified therapists. If provided, these services must meet the needs of the residents.

(a) The facility must provide space and equipment for specialized rehabilitative services in accordance with the needs of the residents.

(b) Specialized rehabilitative services may only be provided by therapists licensed in accordance with Utah law.

(c) All therapy assistants must work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists must have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(e) Specialized rehabilitative services may be provided only if ordered by the attending physician.

(i) The plan of treatment must be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(ii) An initial progress report must be submitted to the attending physician two weeks after treatment is begun or as specified by the physician.

(iii) The physician and therapist must review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) The facility must document the delivery of rehabilitative services in the resident record.

(3) The facility must provide or arrange for regular and emergency dental care for residents.

(a) Dental care provisions shall include:

(b) development of oral hygiene policies and procedures with input from dentists;

(c) presentation of oral hygiene in-service programs by knowledgeable persons;

(d) development of referral service for those residents who do not have a personal dentist; and

(e) arrangement for transportation to and from the dentist's office.

R432-150-24. Food Services.

(1) The facility must provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) There must be adequate staff employed by the facility to meet the dietary needs of the residents.

(a) The facility must employ a dietitian either full-time, part-time, or on a consultant basis.

(b) The dietitian must be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a dietitian is not employed full-time, the administrator must designate a full-time person to serve as the dietetic supervisor.

(d) If the dietetic supervisor is not a certified dietitian, the facility must document at least monthly consulation by a certified dietitian according to the needs of the residents.

(e) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(3) The facility must develop menus that meet the nutritional needs of residents to the extent medically possible.

(a) Menus shall be:

(i) prepared in advance;

(ii) followed;

(iii) different each day;

(iv) posted for each day of the week;

(v) approved and signed by a certified dietician and;

(vi) cycled no less than every three weeks.

(b) The facility must retain documentation for at least three months of all served substitutions to the menu.

(4) The facility must make available for Department review all food sanitation inspection reports of State or local health department inspections.

(5) The attending physician must prescribe in writing all therapeutic diets.

(6) There must be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(7) The facility must provide special eating equipment and assistive devices for residents who need them.

(8) The facility's food service must comply with the Utah Department of Health Food Service Sanitation Regulations R392-100.

(9) The facility must maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu for three meals per day, per resident.

(10) A nursing care facility may use trained dining assistants to aid residents in eating and drinking if:

(a) a licensed practical nurse-geriatric care manager, registered nurse , advance practice registered nurse, speech pathologist, occupational therapist, or dietitian has assessed that the resident does not have complicated feeding problems, such as recurrent lung aspirations, behaviors which interfere with eating, difficulty swallowing, or tube or parenteral feeding; and

(b) The service plan or plan of care documents that the resident needs assistance with eating and drinking and defines who is qualified to offer the assistance.

(11) If the nursing care facility uses a dining assistant, the facility must assure that the dining assistant:

(a) has completed a training course from a Department-approved training program;

(b) has completed a background screening pursuant to

R432-35; and

(c) performs duties only for those residents who do not have complicated feeding problems.

(12) A long-term care facility, employee organization, person, governmental entity, or private organization must submit the following to the Department to become Department-approved training program:

(a) a copy of the curriculum to be implemented that meets the requirements of subsection (13); and

(b) the names and credentials of the trainers.

(13) The training course for the dining assistant shall provide eight hours of instruction and one hour of observation by the trainer to ensure competency. The course shall include the following topics:

(a) feeding techniques;

(b) assistance with eating and drinking;

(c) communication and interpersonal skills;

(d) safety and emergency procedures including the Heimlich manuever;

(e) infection control;

(f) resident rights;

(g) recognizing resident changes inconsistent with their normal behavior and the importance in reporting those changes to the supervisory nurse;

(h) special diets;

(i) documentation of type and amount of food and hydration intake;

(j) appropriate response to resident behaviors, and

(k) use of adaptive equipment.

(14) The training program shall issue a certificate of completion and maintain a list of the dining assistants. The certifcate shall include the training program provider and provider's telephone number at which a long-term care facility may verify the training, and the dining assistant's name and address.

(15) To provide dining assistant training in a Department-approved program, a trainer must hold a current valid license to practice as:

(a) a registered nurse, advanced practice registered nurse or licensed practical nurse-geriatric care manager pursuant to Title 58, Chapter 31b;

(b) a registered dietitian, pursuant to Title 58, Chapter 49 ;

(c) a speech-language pathologist, pursuant to Title 58, Chapter 41; or

(d) an occupational therapist, pursuant to Title 58, Chapter 42a.

(16) The Department may suspend a training program if the program's courses do not meet the requirements of this rule.

(17) The Department may suspend a training program operated by a nursing care facility if:

(a) a federal or state survey reveals failure to comply with federal regulations or state rules regarding feeding or dining assistant programs;

(b) the facility fails to provide sufficient, competent staff to respond to emergencies;

(c) the Department sanctions the facility for any reason; or

(d) the Department determines that the facility is in continuous or chronic non-compliance under state rule or that the facility has provided sub-standard quality of care under federal regulation.

R432-150-25. Medical Records.

(1) The facility must implement a medical records system to ensure complete and accurate retrieval and compilation of information.

(2) The administrator must designate an employee to be responsible and accountable for the processing of medical records.

(a) The medical records department must be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If an RRA or ART is not employed at least part time, the facility must consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

(3) The resident medical record and its contents must be retained, stored and safeguarded from loss, defacement, tampering, and damage from fires and floods.

(a) Medical records must be protected against access by unauthorized individuals.

(b) Medical records must be retained for at least seven years. Medical records of minors must be kept until the age of eighteen plus four years, but in no case less than seven years.

(4) The facility must maintain an individual medical record for each resident. The medical record must contain written documentation of the following:

(a) records made by staff regarding daily care of the resident;

(b) informative progress notes by staff to record changes in the resident's condition and response to care and treatment in accordance with the care plan;

(c) a pre-admission screening;

(d) an admission record with demographic information and resident identification data;

(e) a history and physical examination up-to-date at the time of the resident's admission;

(f) written and signed informed consent;

(g) orders by clinical staff members;

(h) a record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(i) nursing notes;

(j) monthly nursing summaries;

(k) quarterly resident assessments;

(l) a record of medications and treatments administered;

(m) laboratory and radiology reports;

(n) a discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate;

(o) a service agreement if respite services are provided;

(p) physician treatment orders; and

(q) information pertaining to incidents, accidents and injuries.

(r) If a resident has an advanced directive, the resident's record must contain a copy of the advanced directive.

(5) All entries into the medical record must be authenticated including date, name or identifier initials, and title of the person making the entries

(6) Resident respite records must be maintained within the facility.

R432-150-26. Housekeeping Services.

(1) The facility must provide a safe, clean, comfortable environment, allowing the resident to use personal belongings to create a homelike environment.

(a) Cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials must be stored in a locked area to prevent unauthorized access.

(b) The facility must provide adequate housekeeping services and sufficient personnel to maintain a clean and sanitary environment.

(i) Personnel engaged in housekeeping or laundry services cannot be engaged concurrently in food service or resident care.

(ii) If housekeeping personnel also work in food

services or direct patient care services, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary environment.

R432-150-27. Laundry Services.

(1) The administrator must designate a person to direct the facility's laundry service. The designee must have experience, training , or knowledge of the following:

(a) proper use of chemicals in the laundry;

(b) proper laundry procedures;

(c) proper use of laundry equipment;

(d) facility policies and procedures; and

(e) federal, state and local rules and regulations.

(2) The facility must provide clean linens, towels and wash cloths for resident use.

(3) If the facility contracts for laundry services, there must be a signed, dated agreement that details all services provided.

(4) The facility must inform the resident and family of facility laundry policy for personal clothing.

(5) The facility must ensure that each resident's personal laundry is marked for identification.

(6) There must be enough clean linen, towels and washcloths for at least three complete changes of the facility's licensed bed capacity.

(7) There must be a bed spread for each resident bed.

(8) Clean linen must be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(9) Soiled linen must be handled, stored, and processed in a manner to prevent contamination and the spread of infections.

(10) Soiled linen must be sorted in a separate room by methods affording protection from contamination.

(11) The laundry area must be separate from any room where food is stored, prepared, or served.

R432-150-28. Maintenance Services.

(1) The facility must ensure that buildings, equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of residents, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there must be a signed, dated agreement that details all services provided. The maintenance service must meet all requirements of this section.

(c) The facility must develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility.

(2) The facility must ensure that the premises is free from vermin and rodents.

(3) Entrances, exits, steps, ramps, and outside walkways must be maintained in a safe condition with regard to snow, ice and other hazards.

(4) Facilities which provide care for residents who cannot be relocated in an emergency must make provision for emergency lighting and heat to meet the needs of residents.

(5) Functional flashlights shall be available for emergency use by staff.

(6) All facility equipment must be tested, calibrated and maintained in accordance with manufacturer specifications.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Documentation of testing or calibration conducted by an outside agency must be available for Department review.

(7) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(8) Heating, air conditioning, and ventilating systems must be maintained to provide comfortable temperatures.

(9) Back-flow prevention devices must be maintained in operating condition and tested according to manufacturer specifications.

(10) Hot water temperature controls must automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. Hot water must be delivered to public and resident care areas at temperatures between 105-115 degrees F.

(11) Disposable and single use items must be properly disposed of after use.

(12) Nursing equipment and supplies must be available as determined by facility policy in accordance with the needs of the residents.

(13) The facility must have at least one first aid kit and a first aid manual available at a specified location in the facility. The first aid manual must be a current edition of a basic first aid manual approved by the American Red Cross or the American Medical Association.

(14) The facility must have at least one OSHA-approved spill or clean-up kit for blood-borne pathogens.

(15) Vehicles used to transport residents must be:

(a) licensed with a current vehicle registration and safety inspection;

(b) equipped with individual, size-appropriate safety restraints such as seat belts which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, and are installed and used in accordance with manufacturer specifications;

(c) equipped with a first aid kit as specified in R432-150-28(13); and

(d) equipped with a spill or clean-up kit as specified in R432-150-28(14).

R432-150-29. Emergency Response and Preparedness Plan.

(1) The facility must ensure the safety and well-being of residents and make provisions for a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The facility must develop an emergency and disaster plan that is approved by the governing board.

(a) The facility's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) individuals who shall be notified in an emergency in order of priority; and

(vi) methods of transporting and evacuating residents and staff to other locations.

(b) The facility must have available at each nursing station emergency telephone numbers including responsible staff persons in the order of priority.

(c) The facility must document resident emergencies and responses, emergency events and responses, and the location of residents and staff evacuated from the facility during an

emergency.

(d) The facility must conduct and document simulated disaster drills semi-annually.

(3) The administrator must develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan must delineate evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department.

(b) The facility must post the evacuation plan in prominent locations in exit access ways throughout the building.

(c) The written fire or emergency plan must include fire containment procedures and how to use the facility alarm systems and signals.

(d) Fire drills and fire drill documentation must be in accordance with the State of Utah Fire Prevention Board, R710-4.

R432-150-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities
August 5, 2005 26-21-5
Notice of Continuation September 27, 2007 26-21-16

R432. Health, Health Systems Improvement, Licensing.
R432-300. Small Health Care Facility - Type N.
R432-300-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensing.

R432-300-4. Definitions.

(1) Refer to common definitions R432-1-3, in addition;

(2) "Dependent" means a person who meets one or all of the following criteria:

(a) requires inpatient hospital or 24 hour continual nursing care that will last longer than 15 calender days after the day on which the nursing care begins;

(b) is unable to evacuate from the facility without the physical assistance of two persons.

(3) "Health care setting" means a health care facility or agency, either public or private, that is involved in the provision or delivery of nursing care.

(4) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of a resident.

(5) "Owner or licensee" means a licensed nurse who resides in the facility and provides daily direct care during daytime hours to residents in the facility as opposed to simply working a duty shift in the facility.

(6) "Semi-independent" means a person who is:

(a) physically disabled, but able to direct his own care; or

(b) cognitively impaired or physically disabled, but able to evacuate from the facility with the physical assistance of one person.

(7) "Significant change" means a major change in a resident's status that is not self-limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the service plan.

(8) "Small Health Care Facility - Type N" means a home or a residence occupied by the licensee, who is a licensed nurse, that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the licensee.

R432-300-5. License Required.

A license is required to operate a Small Health Care Facility Type N, see R432-2.

R432-300-6. Criteria for Type N Facility.

The licensee must meet the following criteria to obtain a license for a Small Health Care Facility - Type N:

(1) provide care in a residence where the licensee lives full time;

(2) meet local zoning requirements to allow the facility to be operated at the given address;

(3) obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;

(4) have a physician assessment and approval for each resident's admission;

(5) provide daily, licensed nursing care; and

(6) provide 24-hour direct care staff available on the premises.

R432-300-7. Physical Environment.

(1) The licensee must provide comfortable living accommodations and privacy for residents who live in the facility.

(2) Bedrooms may be private or semi-private.

(a) Single-bed rooms must have a minimum of 100 square feet of floor space.

(b) Multiple-bed rooms must have a minimum of 80 square feet of floor space per bed and are limited to two beds.

(c) Beds shall be placed at least three feet away from each other.

(d) The licensee's family members or staff shall not share sleeping quarters with residents.

(e) Each resident shall have a separate twin size or larger sized bed.

(f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) may be used as a sleeping room for a resident.

(g) Each bedroom must have light and ventilation.

(h) Each bedroom must have a window to the outside which opens easily. Windows must have insect screens.

(i) Each bedroom must have a closet or space suitable for hanging clothing and personal belongings.

(j) Each bedroom and toilet room must have a trash container.

(k) The licensee must make available reading lamps in each resident room according to the individual needs of each resident.

(3) Toilets and bathrooms must provide privacy, be well-ventilated, and be accessible to and usable by all persons accepted for care.

(a) Toilets, tubs, and showers must have ADAAG approved grab bars.

(b) If the licensee admits a resident with disabilities, the bath, shower, sink, and toilet must be equipped for use by persons with disabilities in accordance with ADAAG.

(4) Heating, air conditioning, and ventilating systems must provide comfortable temperatures for the resident.

(a) Heating systems must be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(b) Cooling systems must be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(c) Facilities licensed after July 1, 1998, must comply with ventilation and minimum total air change requirements as outlined in R432-6-22 Table 2, which is adopted and incorporated by reference.

(5) Residents may be housed on the main floor only, unless an outside exit leading to the ground grade level is provided from any upper or lower levels.

(6) At least one building entrance shall be accessible to persons with physical disabilities.

R432-300-8. Administration and Organization.

(1) The licensee is responsible for compliance with Utah law and licensing requirements, management, operation, and control of the facility.

(2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.

(3) The licensee must be a licensed nurse with at least two years experience working in a health care setting, and must provide nursing coverage on a daily basis during daytime hours of operation. Facilities licensed prior to July 1, 1998, that do not have a licensed nurse residing in the facility, must provide 24 hour certified nurse aide coverage.

(4) The licensee must employ sufficient staff to meet the needs of the residents.

(5) All employees must be 18 years of age, and

successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee must orient employees to the residents' daily routine and train employees to assist the residents in activities of daily living.

(b) Employees must be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, licenses and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(6) The licensee is responsible to establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients.

(a) Each employee must, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be in accordance with R388-804, Tuberculosis Control Rule.

(d) The licensee must report all infections and communicable diseases reportable by law to the local health department in accordance with R386-702-2.

R432-300-9. Facility Records.

(1) The licensee must maintain accurate and complete records that are filed, stored safely, and are easily accessible to staff and the Department.

(2) Records must be protected against access by unauthorized individuals.

(3) The licensee must maintain personnel records for each employee and retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) an employee application;

(b) the date of employment and initial policies and procedures orientation;

(c) the termination date;

(d) the reason for leaving;

(e) documentation of cardio-pulmonary resuscitation, first aid, and emergency procedures training;

(f) a health inventory;

(g) a food handlers permit;

(h) TB skin test documentation;

(i) documentation of criminal background check; and

(j) certifications, registration, and licenses as required.

(4) The licensee must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) an admission diagnoses and reason for admission;

(f) any known allergies;

(g) the admission agreement;

(h) a copy of an advanced directive or living will initiated by the resident;

(i) a physician's assessment;

(j) a resident assessment;

(k) a written plan of care;

(l) physician orders;

(m) daily nursing notes including temperature, pulse, respirations, blood pressure, height, and weight notations when indicated or as needed due to a change in the resident's condition;

(n) if entrusted to the facility, a record of the resident's cash resources and valuables; and

(o) incident and accident reports.

(5) Resident records must be retained for at least seven years following discharge.

R432-300-10. Acceptance and Retention of Residents.

(1) A Type N Small Health Care facility may accept semi-dependent residents.

(a) The licensee may accept one dependent resident only if the licensee has equipment and additional staff available to assist the dependent resident in the event of a facility emergency evacuation.

(b) The licensee must establish acceptance criteria which includes:

(i) the resident's health needs;

(ii) the residents's ability to perform activities of daily living; and

(iii) the ability of the facility to address the residents needs.

(2) A resident shall not be accepted nor retained by a Type "N" Small Health Care Facility when:

(a) The resident has active tuberculosis or serious communicable diseases;

(b) The resident requires inpatient hospital care; or

(c) The resident has a mental illness that manifests behavior which is suicidal, assaultive, or harmful to self or others.

(3) The licensee must request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the Type N facility.

R432-300-11. Transfer or Discharge Requirements.

(1) The licensee may discharge, transfer, or evict a resident for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases operation.

(2) Prior to transferring or discharging a resident, the licensee must serve a transfer or discharge notice to the resident and the resident's responsible person.

(a) The notice must be either hand-delivered or sent by certified mail.

(b) The notice must be made at least 30 days before the day on which the licensee plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge must:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident or the resident's responsible person can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be

transferred or discharged;

(f) state that the resident or responsible party may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The licensee must provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the licensee shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the licensee, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-300-12. Personal Physician.

(1) Each resident must have a personal physician. The physician's assessment must be completed prior to admission.

(2) The physician's signed assessment shall document:

(a) that the resident is capable of functioning in a Type N Small Health Care Facility;

(b) that the resident is free of communicable diseases or any condition which would prevent admission to the facility;

(c) a list of current medications including dosage, time of administration, route, and assistance required;

(d) type of diet and restrictions or special instructions;

(e) any known allergies; and

(f) any physical or mental limitations, or restrictions on activity.

R432-300-13. Nursing Care.

(1) Each Type N facility must provide nursing care services to meet the needs of the residents.

(2) A licensed nurse must be on-site working directly with residents on a daily basis in accordance with each resident's care plan and individual needs.

(3) Nursing practice must be in accordance with the Utah Nurse Practice Act Section 58-31b-102(10).

(4) Licensed nurses have the following responsibilities:

(a) direct the implementation of physician's orders;

(b) develop and implement an individualized care plan for each resident within seven calender days of admission, and direct the delivery of nursing care, treatments, procedures, and other services to meet the needs of the residents;

(c) review and update at least every six months the health care needs of each resident admitted to the facility and develop resident care plans according to the resident's needs and the physician's orders;

(d) review each resident's medication regimen as needed and immediately after medication changes to ensure accuracy;

(e) ensure that nursing notes describe the care rendered including the resident's response;

(f) supervise staff to assure they perform restorative measures in their daily care of residents;

(g) teach and coordinate resident care and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident; and

(h) plan and conduct documented orientation and in-service programs for staff.

(5) The licensed nurse must develop and maintain a current health services policy and procedure manual that is to be reviewed and updated by the licensed nurse at least annually.

(a) The manual must be accessible to all staff and be available for review by the Department.

(b) The policy and procedure manual must address the following:

(i) bathing;

(ii) positioning;

(iii) enema administration;

(iv) decubitus prevention and care;

(v) bed making;

(vi) isolation procedures;

(vii) blood sugar monitoring procedures;

(viii) telephone orders;

(ix) charting;

(x) rehabilitative nursing;

(xi) diets and feeding residents;

(xii) oral hygiene and denture care;

(xiii) medication administration;

(xiv) Alzheimer's/dementia care;

(xv) universal precautions and blood-borne pathogens; and

(xvi) housekeeping and cleaning procedures.

(6) Each resident's care plan must include measures to prevent and reduce incontinence.

(a) The licensed nurse must assess each resident to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) The licensed nurse must document a weekly evaluation of the resident's performance in the bowel/bladder management program.

(d) Fluid intake and output must be recorded for each resident and evaluated at least weekly when ordered by a physician or nurse.

(7) The licensee must ensure that staff are trained in rehabilitative nursing.

(a) The licensee must provide daily and document rehabilitative nursing services for residents who require such services.

(b) Rehabilitative nursing services shall include the following:

(i) turning and positioning of residents as per physician's or nurse's orders;

(ii) assisting residents to ambulate;

(iii) improving resident's range of motion;

(iv) restorative feeding;

(v) bowel and bladder retraining;

(vi) teaching residents self-care skills;

(vii) teaching residents transferring skills; and

(viii) taking measures to prevent secondary disabilities such as contractures and decubitus ulcers.

R432-300-14. General Resident Care Policies.

(1) Each resident must be treated as an individual with

dignity and respect in accordance with Residents' Rights R432-270-9.

(2) The licensee is responsible to develop and implement resident care policies. These policies must address the following:

(a) The licensee must orient each resident upon admission to the facility, services, and staff.

(b) Each resident must receive care to ensure good personal hygiene, including bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(c) Linens and other items in contact with the resident must be changed weekly or as the item is soiled.

(d) The licensee is responsible to encourage and assist each resident to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises; and

(iv) redirecting residents interests as necessary.

(e) Each resident must receive care and treatment to ensure the prevention of decubitus ulcers, contractures, and deformities.

(f) Each resident must receive good nutrition and adequate fluids for hydration.

(i) All residents must have ready access to water and drinking glasses.

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner.

(iii) Residents who require assistance with eating or drinking must be provided with adaptive equipment.

(g) Each resident has the right to visual privacy during treatments and personal care. Visual privacy may be provided by privacy curtains or portable screens.

(h) Facility staff must answer call lights or monitoring devices promptly.

(3) The licensee must notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the Type N facility license. This notification must be documented in the resident's record.

(4) The licensee is responsible to assist residents in making arrangements for medical and dental care including transportation to and from the medical or dental facility.

(5) The licensee must document and make available for Department review every accident or incident causing injury to a resident or employee. The documentation must include appropriate corrective action.

(6) The licensee is responsible to document and implement a quality improvement process that at least quarterly identifies problems, implements corrective actions, and evaluates the effectiveness of the corrective actions.

R432-300-15. Medications.

(1) A licensed health care professional must upon admission and at least every six months thereafter assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided must be documented on a Department approved form in each resident's service plan.

(2) Each resident's medication program must be administered by means of one of the methods as described in (a) through (c) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the licensee must assess each resident's ability to safely have medications in the unit. If safety is a factor, the resident must keep medications in a locked container in the unit.

(b) The resident requires assistance from facility staff to administer medications. Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing that the resident takes the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(viii) Facility staff must document any staff assistance with medication administration including the type of medication and when it was taken by the resident.

(c) The resident's family or designated responsible person assists the resident with medication administration. Family members or a designated responsible person may set up medications in a package which identifies the medication and time to administer. If family members or a designated responsible person assists with medication administration, they must sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document the type of medication, the time administered, and the amount taken by the resident.

(3) Medication records must include the following information:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) the name of the medication, including prescribed dosage;

(d) the times and dates administered;

(e) the method of administration;

(f) signatures of staff or responsible persons administering the medication; and

(g) the review date.

(4) Any change in the dosage or schedule of medication administration must be ordered by the resident's licensed practitioner and be documented in the medication record. All facility staff or persons assisting with medication administration must be notified of the medication change.

(5) The licensee must have available in the facility a current pharmacological reference book with information on possible reactions and precautions to any medications taken by a resident.

(6) The resident's family and licensed practitioner must be notified if medications errors occur.

(7) Medications must be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, residents shall have timely access to the medication.

(b) Medications that require refrigeration must be stored separately from food items and at temperatures between 36 - 46 degrees F.

(8) The administration, storage, and handling of oxygen must comply with the requirements of the 1996 edition of NFPA 99, which is adopted and incorporated by reference.

(9) Facility policies must address the disposal of unused, outdated, or recalled medications.

(a) The licensee must return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) A licensed health care professional must document

the return to the resident or the resident's responsible person of medication stored in a central storage.

(c) Disposal of controlled substances must comply with the Pharmacy Practice Act, which is adopted and incorporated by reference.

R432-300-16. First Aid.

(1) The licensee must ensure that at least one staff person is on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation, and emergency procedures to ensure that each resident receives prompt first aid as needed. First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(2) The licensee must ensure that a first aid kit is available at a specified location in the facility.

(3) The licensee must ensure that a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency is available at a specified location in the facility.

(4) Each facility must have an OSHA approved clean-up kit for blood borne pathogens.

R432-300-17. Activity Program.

(1) The licensee must provide activities for the residents to encourage independent functioning.

(2) The licensee must complete a resident interest survey and, with the resident's involvement, develop a monthly activity calendar.

(3) The activity program must include the residents' needs and interests to include:

(a) socialization activities;

(b) independent activities of daily living; and

(c) physical activities;

(4) A resident may participate in community activities away from the facility.

R432-300-18. Food Service.

(1) The licensee must provide three meals a day plus snacks, seven days a week, to all residents.

(a) The licensee must maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) Meals must be served with no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food must be of good quality and be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) All food served to residents must be palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may be used as a beverage only upon the resident's request. It may be used in cooking and baking at any time.

(2) A different menu must be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents must be recorded and retained for three months for review by the Department.

(3) Meals must be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(4) Residents shall be encouraged to eat their meals in the dining room with other residents.

(5) The licensee must make available for review inspection reports by the local health department.

(6) If the licensee admits residents requiring therapeutic or special diets, an approved dietary manual must be available for reference when preparing meals. Dietitian consultation must be provided at least quarterly and documented for residents requiring therapeutic diets.

(7) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(8) All personnel who prepare or serve food must have a current Food Handler's Permit.

(9) Food service must comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, which is adopted and incorporated by reference.

R432-300-19. Housekeeping and Maintenance Services.

(1) The licensee must provide housekeeping and maintenance services to maintain a safe, clean, sanitary, and healthful environment.

(2) Entrances, exits, steps, and outside walkways must be maintained and kept free of ice, snow, and other hazards.

(3) The licensee must implement a cleaning schedule to ensure that furniture, bedding, linens, and equipment are cleaned periodically and before use by another resident.

(4) The licensee must control odors by maintaining cleanliness and proper ventilation. Deodorizers may not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) The licensee must provide laundry services to meet the needs of the residents.

(6) The licensee must ensure that all cleaning agents, bleaches, pesticides, or other poisonous, dangerous or flammable materials are stored in a locked area to prevent unauthorized access.

R432-300-20. Pets.

(1) The licensee may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets such as birds and hamsters must be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds must have procedures which prevent the transmission of psittacosis.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-300-21. Disaster and Emergency Preparedness.

(1) The licensee is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee is responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe

weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan must be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility fire extinguishing equipment;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations including specialized training to assist a dependent resident;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The licensee must develop, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) The licensee must ensure that staff and residents receive instruction and training in accordance with the plans to respond appropriately in an emergency. The licensee must:

(a) annually review the procedures with existing staff and residents and conduct unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The licensee must be in charge during an emergency. If not on the premises, the licensee must make every effort to report to the facility, relieve subordinates and take charge.

(7) The licensee must provide in-house equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The licensee must post the following information in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes including the location of exits and fire extinguishers

R432-300-22. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities

August 8, 2000	**26-21-5**
Notice of Continuation September 27, 2007	**26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-650. End Stage Renal Disease Facility Rules.
R432-650-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease (ESRD) facilities in order to provide safe and effective services.

R432-650-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule.

(2) "Interdisciplinary professional team" means a team of qualified professionals who are responsible for creating the Patient Long Term Care Program and Patient Care Plan. The qualifications are described in 42CFR 405.2137(a) and (b), 1997, which is adopted and incorporated by reference.

R432-650-4. Licensure.

License Required. See R432-2 and R432-3.

R432-650-5. Patient Care Services.

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U., 1997, which is adopted and incorporated by reference.

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

(a) The Communicable Disease Rule, R386-702;

(b) Tuberculosis Control Rule, R388-804; and

(c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B, and for Tuberculosis by the Mantoux method within the first two weeks of beginning employment.

R432-650-7. Required Staffing.

(1) Each patient shall be under the continuing supervision of a physician. A physician shall be available in medical emergency situations through a current telephone call roster readily accessible to the nursing staff.

(2) Physician assistants and advanced practice registered nurses may provide services in ESRD facilities in association with the supervising or consulting nephrologist, and in accordance with state law.

(3) Each ESRD facility shall provide sufficient qualified clinical staff to meet patient care needs. A minimum of two clinical staff personnel, one a registered nurse for supervision of patient clinical care, shall be on duty whenever patients are receiving dialysis services.

(a) A registered nurse may not supervise the clinical care of more than 10 patients if arranged in an open setting, or 12 patients if arranged in three pods of four patients.

(b) A registered nurse may not supervise patient clinical care, or provide unsupervised patient clinical care until the nurse has completed training and demonstrated competency as determined by facility policy.

(c) Dialysis technicians and licensed practical nurses may not be assigned patient clinical care for more than four patients at a time.

(d) Dialysis technicians and licensed practical nurses must complete training and demonstrate competency according to facility policy prior to providing patient care.

(4) Each ESRD facility must orient all employees to specific job requirements and facility policies. The facility shall document initial and on-going employee orientation and training. Patient clinical care staff orientation and training shall include at least the following topics:

(a) patient rights and responsibilities;

(b) kidney disease processes;

(c) hemodialysis process;

(d) hemodialysis complications;

(e) dialysis access and management;

(f) psycho-social implications of dialysis on patient care;

(g) nutritional requirements;

(h) universal precautions;

(i) use of the medical emergency kit;

(j) use and function of facility equipment;

(k) emergency procedures;

(l) AAMI water treatment standards; and

(m) dialyzer re-use procedures, if offered.

(5) A registered nurse may delegate the following patient care activities to licensed practical nurses or dialysis technicians:

(a) cannulation of peripheral vascular access;

(b) administration of intradermal lidocaine, intravenous heparin and intravenous normal saline; and

(c) initiation, monitoring and discontinuation of the dialysis process.

(6) Each ESRD facility must ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

R432-650-8. Patient Care Plan.

(1) Each patient must have a care plan that is developed and implemented by the interdisciplinary team with the patient's consent within one month of beginning treatment.

(2) Each patient who receives treatment for more than 90 days must have a long-term care program that is developed and implemented by the interdisciplinary team with the patient's participation.

R432-650-9. Emergency Equipment.

(1) Each ESRD facility must have available on-site a medical emergency kit containing medications, equipment and supplies. The medical director shall determine and approve the contents of the kit.

(2) Each ESRD facility must have available on-site an emergency supply of oxygen.

R432-650-10. Drug Storage.

(1) Each ESRD facility shall provide for controlled storage and supervised preparation and use of medications. Medications and food items may be stored in the same refrigerator if safely separated.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(c) Medications must be kept in the original container and may not be transferred to other containers.

(2) If a medication station is provided, the facility shall provide a work counter and hand washing facilities.

R432-650-11. Medical Records.

(1) Each ESRD facility must store and file medical records to allow for easy staff access.

(a) Medical records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(2) The licensee must retain medical records for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-12. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as published in "Hemodialysis Systems," second edition, which is adopted and incorporated by reference.

(2) Each ESRD facility that utilizes in-center water systems must have bacteriologic quality analysis performed and documented at least monthly by a laboratory that adheres to AAMI standards.

(3) For home systems, the ESRD facility must conduct bacteriological quality analysis at least monthly using an approved home testing methodology as identified in the patient care plan.

(a) An alternate schedule of testing may be approved by the attending physician.

(b) The alternate schedule shall be specified in the patient care plan.

(4) If reverse osmosis or deionization devices are used for in-center or home systems, the ESRD facility must have chemical quality analysis performed and documented at least once every 12 months by a laboratory that adheres to AAMI standards.

(5) The ESRD facility must maintain and make available for Department review all water quality test results. In the case of home dialysis, test results shall become part of the patient record maintained by the ESRD facility.

R432-650-13. Continuous Quality Improvement Program.

(1) Each ESRD facility must implement a well-defined continuous quality improvement program to monitor and evaluate the quality of patient care services. The program shall be consistent with the scope of services offered and adhere to accepted standards of care associated with the renal dialysis community.

(2) The program shall include a review of patient care records, facility policies and practices to:

(a) identify and assess problems and concerns, or opportunities for improvement of patient care;

(b) implement actions to reduce or eliminate identified problems and concerns, and improve patient care; and

(c) document corrective actions and results.

(3) The administrator shall establish a committee to implement the continuous quality improvement program. The committee shall include the facility administrator or designee, the medical director, the nursing supervisor, and other individuals as identified in the program.

(4) The committee must meet at least quarterly and keep minutes and related records, which shall be available for Department review.

(5) The continuous quality improvement program may include more than one facility in scope only when the facilities are organized under the same governing body and the program addresses problems, concerns and issues at the individual ESRD facility level.

R432-650-14. Physical Environment.

The following standards apply for new construction and remodeling of ESRD facilities:

(1) The treatment area may be an open area and shall be separate from the administrative and waiting area. Individual treatment areas must contain at least 80 square feet. Each treatment area shall have the capacity for privacy for each patient.

(2) The dialysis treatment area must include a nurses station designed to provide visual observation of the patient treatment area.

(3) There shall be at least one hand washing facility serving no more than eight stations. All hand washing stations shall be convenient to the nurses station and treatment areas.

(4) If an infection isolation room is required to control airborne infection, the isolation room shall have a separate hand washing facility and comply with R386-702, Communicable Disease Rule, and other applicable standards determined in the pre-construction plan review process.

(5) If the ESRD facility provides home dialysis training, a private treatment room of at least 120 square feet is required for patients who are being trained to use dialysis equipment at home. The room shall contain a counter, hand washing facilities, and a separate drain for fluid disposal.

(6) Each ESRD facility must provide a clean work area that is separate from soiled work areas. If the area is used for preparing patient care items, it must contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile materials, the work counter and hand washing facilities may be omitted.

(7) Each ESRD facility must provide a soiled work area that contains a hand washing sink, work counter, storage cabinets, waste receptacles and a soiled linen receptacle.

(8) If dialyzers are reused, a reprocessing room is required that is sized and equipped to perform the functions required and to include one-way flow of materials from soiled to clean with provisions for refrigerated temporary storage of dialyzers, a decontamination and cleaning area, sinks processors, computer processors and label printers, a packaging area, and dialyzer storage cabinets.

(9) If a nourishment station for dialysis service is provided, the nourishment station must contain a sink, a work counter, a refrigerator, storage cabinets, and equipment for serving nourishments as required.

(10) Each ESRD facility must have an environmental services closet immediately available to the treatment area. The closet must contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(11) If an equipment maintenance service area is provided, the service area must contain hand washing facilities, a work counter and a storage cabinet.

(12) Each ESRD facility must provide a supply area or supply carts.

(13) Storage space out of the direct line of traffic shall be available for wheelchairs and stretchers, if stretchers are provided.

(14) Each ESRD facility must provide a clean linen storage area commensurate with the needs of the facility. The storage area may be within the clean work area, a separate closet, or distribution system. If a closed cart distribution system is used for clean linen, the cart must be stored out of the path of normal traffic.

(15) Each ESRD facility using central batch delivery system, must provide, either on premises or through written arrangements, individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(16) Each ESRD facility must house water treatment equipment in an enclosed room at a sufficient distance from the patient treatment area to prevent machinery and operational noise from disturbing patients.

(17) Each ESRD facility must provide a patient toilet with hand washing facilities immediately adjacent to the treatment area.

(18) Each ESRD facility must provide lockers, toilets and hand washing facilities for staff.

(19) Each ESRD facility must provide a secure storage area for patients' belongings.

(20) A waiting area with seating accommodations shall be available or accessible to the dialysis unit. A toilet room with hand washing facilities, a drinking fountain, and a telephone for public use shall be available or accessible for use by persons using the waiting room.

(21) Office and clinical work space shall be available for administrative services.

R432-650-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
January 11, 1999 26-21-5
Notice of Continuation September 27, 2007 26-21-16

R432. Health, Health Systems Improvement, Licensing.
R432-700. Home Health Agency Rule.
R432-700-1. Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.

All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to to the requirements of R432-700-30.

R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.

(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:

(a) Provision of skilled services authorized by a physician;

(b) Nursing services assessed, provided, or supervised by registered nurses;

(c) Other related health services approved by a licensed practitioner;

R432-700-7. Licensure Required.

(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.

(2) See R432-2.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) Notify the licensing agency the name of a new administrator in writing no later than five days after hire.

(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(6) Make provision for resources and equipment to provide a safe working environment for personnel.

(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision

for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704, Communicable Disease Rules.

(3) Skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) Skin testing must be conducted on each health care worker who has direct patient contact annually and after known exposure to a patient with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;
(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;
(d) The family situation changes and affects the delivery of services;
(e) The patient or family is uncooperative in efforts to attain treatment objectives;
(f) The patient moves from the geographic area served by the agency;
(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;
(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;
(i) The agency discontinues a particular service or terminates all services;
(j) The agency can no longer provide quality care in the place for residence;
(k) The patient or family requests agency services to be discontinued;
(l) The patient dies;
(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or
(n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.
(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.
(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.
(2) Agency policy may determine how patients' rights information is distributed.
(3) The agency shall insure that each patient receiving care has the following rights:
(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;
(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;
(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;
(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;
(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;
(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;
(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;
(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;
(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;
(j) To receive proper identification from the individual providing home health services;
(k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.
(1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.
(2) Physician's orders may include:
(a) Diet and nutritional requirements;
(b) Medications;
(c) Frequency and type of service;
(d) Treatments;
(e) Medical equipment and supplies;
(f) Prognosis.

R432-700-18. Patient Records.
(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.
(2) Records shall be maintained in an organized format.
(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.
(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.
(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.
(6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.
(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.
(8) Each patient's record shall contain at least the following information:
(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;
(b) A written plan of care;
(c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;
(d) Reasons for referral to home health agency;
(e) Statement of the suitability of the patient's place of residence for the provision of health care services;
(f) Documentation of telephone consultation or case conferences with other individuals providing services;
(j) Signed and dated clinical notes for each patient contact or home visit including services provided
(h) A written Termination of Services summary which describes:
(i) The care or services provided;
(ii) The course of care and services;
(iii) The reason for discharge;
(iv) The status of the patient at time of discharge;
(v) The name of the agency or facility if the patient was referred or transferred.
(9) For those patients who receive skilled services the

following items shall be included in the patient record in addition to R432-700-18(8):

(a) Diagnosis;

(b) Pertinent medical and surgical history;

(c) A list of medications and treatments;

(d) Allergies or reactions to drugs or other substances;

(e) Clinical notes to include a description of the patient condition and significant changes such as:

(i) Objective signs of illness, disorders, body malfunction;

(ii) Subjective information from the patient and family;

(iii) General physical condition;

(iv) General emotional condition;

(v) Positive or negative physical and emotional responses to treatments and services;

(vi) General behavior; and

(vii) General appearance.

(f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.

(1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.

(2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.

(3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.

(4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.

(5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.

(6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.

(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.

(2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.

(3) The agency shall demonstrate concern for cost of care by evaluation of the following:

(a) Relevance of health care services;

(b) Appropriateness of treatment frequency;

(c) Use of less expensive, but still effective, resources whenever possible;

(d) Use of ancillary services consistent with patient needs.

(4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.

(a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.

(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.

(5) The methodology for evaluation shall include but is not limited to:

(a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;

(b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;

(c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.

(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.

(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.

(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.

(4) Nursing staff shall observe, report, and record written clinical notes.

(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.

(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.

(7) Licensed nurses shall have the following responsibilities:

(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;

(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;

(c) Inform the physician and other personnel of changes in the patient's condition and needs;

(d) Write clinical notes in the individual patient record for each visit or contact;

(e) Teach self-care techniques to the patient or family, or both;

(f) Develop plans of care;

(g) Participate in in-service programs.

(8) The director of nursing services shall be responsible for and shall be accountable for the following functions:

(a) Designate a registered nurse to act as director of nursing services during his absence;

(b) Assume responsibility for the quality of nursing services provided by the agency;

(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;

(d) Establish work schedules for nursing personnel according to patient needs;

(e) Assist in development of job descriptions for nursing personnel;

(f) Complete performance evaluations for nursing personnel according to agency policy;

(g) Direct in-service programs for all nursing personnel.

(9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:

(a) Make the initial nursing evaluation visit;
(b) Re-evaluate nursing needs based on the patient's status and condition;
(c) Initiate the plan of care and make necessary revisions;
(d) Provide services which require specialized nursing skill;
(e) Initiate appropriate preventive and rehabilitative nursing procedures;
(f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree ot supervision needed;
(g) Assist in coordinating all services provided;
(h) Prepare termination of services statements;
(i) Supervise and consult with licensed practical nurses as necessary;
(j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;
(k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;
(l) Make supervisory visits with or without the certified nursing aide's presence as follows:
(i) Initial assessment;
(ii) Every two weeks to patients who receive skilled services;
(iii) Every three months to patients who require long-term maintenance services;
(iv) Any time there is a question of change in the patient's condition.
(10) The licensed practical nurse shall have the following responsibilities:
(a) Work under the supervision of a registered nurse;
(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;
(c) Assist the registered nurse in performing specialized procedures;
(d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.
The certified nursing aide shall have the following responsibilities:
(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;
(2) Perform normal household services essential to health care at home;
(3) Make occupied or unoccupied beds;
(4) The certified nursing aide may supervise the patient's self-administration of medication by:
(a) Reminding the patient it is time to take medications;
(b) Opening the bottle cap;
(c) Reading the medication label to patients;
(d) Checking the self-administered dosage against the label of the container;
(e) Reassuring the patient that he is taking the correct dose;
(f) Observing the patient taking his medication.
(5) Perform simple diagnostic activities;
(6) Perform activities of daily living as written in plan of care;
(7) Give nail care as described in the plan of care;
(8) Observe and record food and fluid intake when ordered;
(9) Change dry dressings according to written instructions from the supervisor;
(10) Administer emergency first aid;
(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;
(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;
(13) Write clinical notes in individual patient records.
(14) Certified Nursing Aides shall be at least 18 years old.
(15) Certified Nursing Aides shall have received a certificate of completion for the employment position:
(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;
(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur within six months of the date of hire.

R432-700-23. Personal Care Aides.
(1) Personal care aides shall be at least 18 years of age and have the following responsibilities:
(a) Receive written instructions from the supervisor;
(b) Perform only the tasks and duties outlined in the service agreement;
(c) Have knowledge of agency policy and procedures;
(d) Be trained in first aid;
(e) Be oriented and trained in all aspects of care to be provided to clients;
(f) Be able to demonstrate compentency in all areas of training for personal care; and
(g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;
(2) Personal Care Aides may assist clients with the following activities:
(a) Self-administration of medications by:
(i) reminding the client to take medications, and
(ii) opening containers for the client;
(b) Housekeeping;
(c) Personal grooming and dressing;
(d) Eating and meal preparation;
(e) Oral hygiene and denture care;
(f) Toileting and toilet hygiene;
(g) Arranging for medical and dental care including transportation to and from the appointment;
(h) taking and recording oral temperatures;
(i) Administering emergency first aid;
(j) Providing or arranging for social interaction;
(k) Providing transportation.
(3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.
(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.
(2) A plan of care shall be developed and signed by a licensed health care professional.
(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.
(4) Modifications or additions to the initial plan of care shall be made as necessary.
(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.
(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

(h) Diet or nutritional requirements;

(i) Necessary safety measures;

(j) Instructions, if any, to patient and/or family;

(k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(6) Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

(a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;

(c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

(1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW)or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

R432-700-30. Home Health - Personal Care Service Agency.

(1) A Home Health - Personal Care Service Agency provides personal care services exclusively.

(2) The agency shall develop written policies and procedures that address the delivery of personal care services.

(3) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(a) The administrator shall have at least one year or managerial or supervisory experience.

(b) The administrator shall designate in writing a qualified person who shall act in his absence and the designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being;

(c) The administrator or designee shall be available during the agency's hours of operation.

(4) Each employee shall be licensed, certified or registered as required in R432-700-10.

(5) Each employee shall complete a health screening as described in R432-700-11.

(6) The agency may accept clients for service if the

client's needs do not exceed the level of personal care to be provided by the Home Health- Personal Care Service Agency.

(7) A functional assessment shall be completed for each client, prior to admission to the agency and annually thereafter, or at earlier intervals when a significant change in condition occurs.

(a) The functional assessment shall be performed by a licensed health care professional. The assessment shall include a statement from the licensed health care professional that the personal care services can be provided safely to the client.

(b) If the functional assessment reveals that the client's needs exceed the personal care services, the health care professional shall make a referral to a home health agency or other alternative service.

(8) The agency shall obtain a signed and dated service agreement from the client and his responsible party, if available. The service agreement shall include the following:

(a) A description of services to be performed by the Personal Care Aide;

(b) Charges for the services;

(c) A statement that a 30-day notice shall be given prior to a change in charges.

(9) The Home Health-Personal Care Service Agency shall maintain and secure client records for each client receiving services.

(a) Client records shall be retained by the agency for three years following the last date of service;

(b) The client record shall contain the following:

(i) Client's name, date of birth and address;

(ii) Client service agreement;

(iii) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;

(iv) Documentation of date and reason for the termination of services, which may include the following:

(A) Payment for services cannot be met;

(B) The safety of the client or provider cannot be assured;

(C) The needs of the client exceed the level of care provided by the agency;

(D) The client requests termination of services; or

(E) The agency discontinues services.

(v) Documentation of the Personal Care Aide visit.

(10) Personal Care Aides shall meet the qualification of R432-700-23 and be supervised by an individual with the following qualifications:

(a) A Certified Nursing Aide with at least two years experience in personal or home care; or

(b) A licensed health care professional.

(11) The supervisor shall evaluate and document the quality of the personal care services provided in the client's place of residence every six months.

R432-700-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
November 6, 2000 26-21-5
Notice of Continuation September 27, 2007 26-21-2.1

R432. Health, Health Systems Improvement, Licensing.
R432-750. Hospice Rule.
R432-750-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-750-2. Purpose.

A hospice program provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

(1) A hospice program recognizes dying as a normal process resulting from disease or injury.

(2) A hospice service neither hastens nor postpones death.

(3) A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs, patients and families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(4) The hospice program is a health care agency or facility which offers palliative and supportive services providing physical, psychosocial, spiritual and bereavement care for dying persons and their families.

(5) A hospice provides services through an interdisciplinary team of professionals and volunteers.

(6) Hospice services are available in both the home and an inpatient setting.

R432-750-3. Time for Compliance.

All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1998.

R432-750-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Appropriate" means especially suitable or compatible; fitting.

(b) "Bereavement" means the period of time, usually occurring within the first year after the loss, during which a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

(c) "Care" means to perceive and respond to the needs of another.

(d) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.

(e) "Family" means a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.

(f) "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

(g) "Hospice" means a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals and their families.

(h) "Hospice Administrator" means a person who is appointed in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

(i) "Hospice Care" means the care given to the terminally ill and their families which occurs in a home or in a health facility and which includes medical, palliative, psychosocial, spiritual, bereavement and supportive care and treatment.

(j) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or designated hospice licensed hospice unit in an existing health care facility.

(k) "Interdisciplinary Team" means a team composed of physician (attending and medical director), nurse, social worker, pastoral care provider, volunteer, patient and family, and any other professionals as indicated.

(l) "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms and pain management rather than treatment to cure.

(m) "Palliative Care" means the care given to the terminally ill, focusing on relief of distressing symptoms

(n) "Pastoral Care Provider" means an individual who has received a degree from an accredited theological school, or an individual who by ordination or by ecclesiastical endorsement from the individual's denomination has been approved to function in a pastoral capacity. A Pastoral Care Provider may also be an individual who has received certification in Clinical Pastoral Education which meets the requirements for the College of Chaplains. The individual shall have experience in pastoral duties and be capable of providing for hospice patients' and families' spiritual needs.

(o) "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

(p) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, certified nursing aide, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.

(q) "Spiritual" means patient's and families' beliefs and practices as they relate to the meaning of their life, death, and their connection to humanity which may or may not be of a religious nature.

(r) "Terminal Illness" means a state of disease characterized by a progressive deterioration with impairment of function which without aggressive intervention, survival is anticipated to be six months or less.

(s) "Terminal Care" means the care provided to an individual during the final stage of their illness.

(t) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.

(u) "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice; one who contributes time and talent to the hospice program without economic remuneration.

R432-750-5. Licensure.

Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

R432-750-6. Eligibility.

These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, which provides, directly or by contract hospice services to the terminally ill.

R432-750-7. Governing Body and Administration.

(1) The hospice agency shall be organized under a governing body that assumes full legal responsibility for the

conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body is responsible to:

(a) comply with all federal regulations, state rules, and local laws;

(b) adopt policies and procedures which describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) develop and implement bylaws which shall include at least:

(i) a statement of purpose,

(ii) a statement of qualifications for membership and methods to select members of the governing board,

(iii) a provision for the establishment, selection, and term of office for committee members and officers,

(iv) a description of functions and duties of the governing body officers and committees,

(v) a statement of the authority and responsibility delegated to the hospice administrator, and

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(e) meet at least annually, or more frequently as stated in the bylaws;

(f) appoint by name and in writing a qualified hospice administrator who is responsible for the agency's overall functions;

(g) notify the licensing agency in writing 30 days prior to any proposed change in the hospice administrator, identifying the name of the new hospice administrator and the effective date of the change;

(h) review the written annual evaluation report from the hospice administrator and document recommendations as necessary;

(i) make provision for resources and equipment to provide a safe working environment for personnel;

(j) establish a system of financial management and accountability.

(4) The hospice administrator is responsible for the overall management of the agency.

(a) The hospice administrator must designate in writing the name and title of a qualified person who shall act as hospice administrator in the temporary absence of the hospice administrator. This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(b) The hospice administrator or designee shall be available during the agency's hours of operation.

(c) The hospice administrator is responsible to:

(i) complete, submit, file, and make available all records, reports, and documentation required by the Department;

(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing body;

(iii) implement agency policies and procedures;

(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;

(vi) appoint by name and in writing a registered nurse to be the director of nursing services;

(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;

(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(ix) designate by name and in writing a person responsible for maintaining a clinical record system on all patients;

(x) maintain current written designations or letters of appointment in the agency;

(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(xii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(xiii) secure contracts for services not directly provided by the hospice;

(xiv) implement a program of budgeting and accounting;

(xv) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source; and

(xvi) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.

R432-750-8. Personnel.

The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) The agency shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training; and

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee must provide within 45 days of hire proof of registration, certification, or licensure as required by the Utah Department of Commerce.

(3) The agency shall establish and implement a policy and procedure for health screening of all agency personnel.

(a) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(b) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with R386-702 Communicable Disease Rule.

(d) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804 Tuberculosis Control Rule.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(4) The hospice must document that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(a) Orientation shall include:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies; and

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation pursuant to 62A-3-302.

(b) The hospice shall provide and document in-service training and continuing education for staff at least annually.

(i) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The hospice shall train all personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assure that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of all levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) The hospice program shall provide access to individual and/or group support for interdisciplinary team members to assist with stress and/or grief management related to providing hospice care.

R432-750-9. Contracts.

(1) The hospice administrator shall secure a legally binding written contract for the provision of arranged patient services.

(2) The contract or agreement shall be available for review by the Department.

(3) The contract shall include:

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) provision for financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner in which services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, or regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) a provision to terminate the contract; and

(h) a photocopy of the professional license of contract personnel, if applicable.

R432-750-10. Acceptance and Termination.

(1) The agency shall develop written acceptance and termination policies and make these policies available to the public upon request.

(2) The agency shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) A patient will be accepted for treatment if there is reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The agency shall base the acceptance determination on the following:

(a) The patient, family or responsible person agrees that hospice care is appropriate and completes a signed informed consent document requesting hospice services. If no primary care person is available, the agency shall complete an evaluation to determine the patient's eligibility for service.

(b) The patient's attending physician must order hospice care.

(c) The hospice agency determines that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) The agency may terminate services to a patient if any of the following circumstances occur:

(a) The patient is determined to no longer be terminal.

(b) The family situation changes which affects the delivery of services.

(c) The patient or family is uncooperative in efforts to attain treatment objectives.

(d) The patient moves from the geographic area served by the agency.

(e) The physician fails to renew orders or the patient changes his physician and the agency cannot obtain orders for continuation of services from the new physician.

(f) The agency can no longer provide quality care in the existing environment due to safety of staff, patient, or family.

(g) The patient or family requests that agency services be discontinued.

(5) Upon transfer from a home program to an in-patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-11. Patients' Rights.

(1) The agency shall establish and make available to the patient written patients' rights.

(a) Written patients' rights shall be made available to the, responsible party, next of kin, sponsoring agency, representative payee, and the public upon request.

(b) Agency policy may determine how patients' rights information is distributed.

(2) The agency shall insure that each patient receiving care has the following rights:

(a) to receive information on patient's rights and responsibilities;

(b) to receive information on services for which the patient or a third party payor may be responsible and to

receive information on all changes in charges;

(c) to be informed of personal health conditions, unless medically contraindicated and documented in the clinical record, and to be afforded the opportunity to participate in the planning of the hospice services, including referral to health care institutions or other agencies and to refuse to participate in experimental research;

(d) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such if refused;

(e) to be assured confidential treatment of personal and medical records and to approve or refuse the release of records to any individual outside the agency except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) to be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) to receive information about the hospice services required in order to assist in the course of treatment;

(h) to be assured the personnel who provide care are qualified through education and experience to carry out the services for which they are responsible;

(i) to receive proper identification by the individual providing hospice services;

(j) to permit the patient the right to discontinue hospice care at any time he or she chooses; and

(k) to receive information about advanced directives.

R432-750-12. Patient Records.

(1) The administrator shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) Records shall be organized in a uniform medical record format.

(b) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) The hospice shall maintain an accurate, up-to-date record for every patient receiving service.

(d) Each hospice health care provider who has patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) All entries must be dated and authenticated with the signature and title of the person making the entry.

(f) The hospice must document services provided and outcomes of these services in the individual patient record.

(2) Physician's orders shall be incorporated into the plan of care and renewed at least every 90 days.

(a) The orders shall include the physician signature and date.

(b) Orders faxed from the physician are acceptable provided that the original order is available upon request.

(3) Each patient's record shall contain at least the following information:

(a) demographic information including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) diagnosis;

(c) pertinent medical and surgical history if available;

(d) a written and signed informed consent to receive hospice services;

(e) orders by the attending physician for hospice services;

(f) medications and treatments as applicable;

(g) a written plan of care; and

(h) a signed, dated patient assessment which includes the following:

(i) a description of the patient's functional limitations;

(ii) a physical assessment noting chronic or acute pain and other physical symptoms and their management;

(iii) a psychosocial assessment of the patient and family;

(iv) a spiritual assessment; and

(v) a written summary report of hospice services provided.

(4) The hospice must send a copy of the summary required in subsection 12(3)(g)(v) to the patient's attending physician at least every 90 days. The summary shall become part of the patient's and family record as applicable.

(5) The person who is assigned to supervise or coordinate care for a patient must complete a discharge summary when services to the patient are terminated. The summary shall include:

(a) the reason for discharge; and

(b) the name of the facility or agency if the patient has been referred or transferred.

(6) The hospice shall safeguard clinical record information against loss, destruction, and unauthorized use.

(a) Written procedures shall govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/client information and photographing of recorded information.

(c) When a patient is transferred to another facility or agency, a copy of the record or abstract must be sent to that service agency.

(7) The agency shall provide an accessible area for filing and safe storage of medical records.

(a) Patient records shall be retained for at least seven years after the last date of patient care.

(b) Upon change of ownership, all patient records shall be transferred to new owners.

R432-750-13. Quality Assurance.

(1) The governing body shall evaluate the quality, appropriateness, and scope of services provided by the agency at least annually to determine if the agency has met the agency objectives.

(2) An interdisciplinary quality assurance committee shall evaluate patient services at least quarterly and maintain a written report of findings. Recommendations from each meeting shall be submitted to the hospice administrator and shall be maintained in the agency for review by the department.

(a) The administrator shall appoint the members of the quality assurance committee for a given term of membership.

(b) The quality assurance committee shall include a minimum of three individuals who represent three different health care services.

R432-750-14. Hospice Services.

(1) A hospice unit of care includes the patient and the patient's family. The patient and family (or other primary care person) participate in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Hospice care includes responding to the scheduled and unscheduled needs of the patient and family 24 hours per day. Written policies and procedures shall include:

(a) a procedure for accepting referrals in accordance with the provisions of R432-750-10;

(b) a procedure for completing an initial assessment and developing the interdisciplinary care plan;

(c) providing for and documenting that the interdisciplinary team meets regularly to evaluate care and

includes inpatient and in-home care staff;

(d) provision for the care plan to be available to team members for in-home and inpatient services;

(e) appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) provision for a clearly defined integrated administrative structure between in-home care and inpatient services; and

(g) coordination of care plan between in-home hospice and inpatient hospice care.

(3) Hospice care shall be provided by the interdisciplinary team.

(a) The interdisciplinary team may include ancillary staff when appropriate.

(b) The interdisciplinary team shall meet at least twice a month to develop and maintain an appropriate plan of care.

(4) A care plan for each patient must be signed by the attending physician and include the following:

(a) the name of patient;

(b) all pertinent diagnoses;

(c) objectives, interventions, and goals of treatment, based upon needs identified in a comprehensive patient assessment;

(d) services to be provided, at what intervals and by whom; and

(e) the date plan was initiated and dates of subsequent reviews.

(5) No medication or treatment requiring an order may be given by hospice nurses except on the order of a person lawfully authorized to give such an order.

(a) Initial orders and subsequent changes in orders for the administration of medications shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the program.

(b) Telephone orders must be received by licensed personnel and recorded immediately in the patient's medical record. Telephone orders must be countersigned by the initiator within 15 days of the date of issue.

(c) Orders for therapy services shall include the specific procedures to be used and the frequency and duration.

(d) The attending physician shall review, sign and date orders at least every 90 days.

(e) Only those hospice employees licensed to do so may administer medications to patients.

(f) Medications and treatments that are administered by hospice employees, must be administered as prescribed and recorded in the patients record.

R432-750-15. Physician Services.

(1) Each patient admitted for hospice services shall be under the care of a licensed physician.

(2) The physician shall provide the following:

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders; and

(e) pertinent orders regarding the patient's terminal condition.

(3) The administrator shall appoint in writing a licensed physician to be the medical director. The Medical Director must be knowledgeable about the psychosocial and medical aspects of hospice care, on the basis of training, experience and interest. The medical director shall:

(a) act as a medical resource to the interdisciplinary team;

(b) coordinate services with each attending physician to ensure continuity in the services provided in the event the attending physician is unable to retain responsibility for patient care; and

(c) act as liaison with physicians in the community.

R432-750-16. Nursing Services.

(1) A registered nurse shall provide or direct nursing services.

(2) Registered nursing personnel shall perform the following tasks:

(a) make the initial nursing evaluation visit;

(b) re-evaluate the patient's nursing needs as required;

(c) initiate the plan of care and necessary revisions;

(d) provide directly or by contract skilled nursing care;

(e) assign, supervise and teach other nursing personnel and primary care person;

(f) coordinate all services provided with members of the interdisciplinary team;

(g) inform the physician and other personnel of changes in the patient's condition and needs;

(h) prepare clinical progress notes; and

(i) participate in in-service training programs.

R432-750-17. Medical Social Work Services.

(1) The agency shall provide social work services by a qualified social worker who has received a degree from an accredited school of Social Work.

(2) Social work services shall be provided by a social worker licensed under the Mental Health Professional Practice Act (Title 58, Chapter 60).

(3) The social worker shall participate in in-service training to meet the care needs of the patient and family.

R432-750-18. Professional Counseling Services.

(1) The agency shall provide counseling services to patients either directly or by contract. These services may include dietary and other counseling services deemed appropriate to meet the patients' and families' needs.

(2) Individuals who provide counseling services, whether employed or contracted by the agency, must be licensed, certified, registered, or qualified as to education, training, or experience according to law.

R432-750-19. Pastoral Care Services.

(1) The hospice shall provide pastoral services through a qualified staff person who has a working relationship with local clergy or spiritual counselors.

(2) Pastoral services shall include the following:

(a) spiritual counseling consistent with patient and family belief systems;

(b) communication with and support of clergy or spiritual counselors in the community as appropriate; and

(c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-20. Volunteer Services.

Hospice volunteers provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1) Volunteers must receive a minimum of 12 hours of documented orientation and training which shall include the following:

(a) the hospice services, goals, and philosophy of care;

(b) the physiological aspects of terminal disease;

(c) family dynamics, coping mechanisms and psychosocial and spiritual issues surrounding the terminal disease, death and bereavement;

(d) communication skills;

(e) concepts of death and dying;

(f) care and comfort measures;

(g) confidentiality;
(h) patient's and family's rights;
(i) procedures to be followed in an emergency;
(j) procedures to follow at time of patient death;
(k) infection control and safety;
(l) stress management; and
(m) the volunteer's role and documentation requirements.

(3) The hospice shall maintain records of hours of services and activities provided by volunteers.

(4) The agency shall have on file, a copy of certification, registration, or license of any volunteer providing professional services.

R432-750-21. Bereavement Services.

(1) Bereavement services shall address the family needs following the death of the patient. Services are available, as needed, to survivors for at least one year.

(2) Bereavement services shall be supervised by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, counseling, and bereavement services.

(3) All volunteers and staff who deliver bereavement services shall receive bereavement training.

(4) Bereavement services shall include the following:

(a) survivor contact, as needed and documented, following a patient's death;

(b) an interchange of information between the team members regarding bereavement activities; and

(c) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-22. Other Services.

(1) Other services may include but are not limited to:
(a) physical therapy;
(b) occupational therapy;
(c) speech therapy; and
(d) certified nursing aide.

(2) Services provided directly or through contract shall be ordered by a physician and documented in the clinical record.

R432-750-23. Freestanding Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, freestanding inpatient hospice facilities shall meet the Construction and Physical Environment requirements of R432-4, R432-5 and R432-12, depending on facility size and type of patient admitted.

R432-750-24. Hospice Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, inpatient hospice facilities shall meet the requirements of R432-750-25 through R432-750-40.

R432-750-25. Inpatient Staffing Requirements.

(1) The inpatient hospice must provide competent hospice trained nursing staff 24 hours per day, every day of the week to meet the needs of the patient in accordance with the patient's plan of care. Nursing services must provide treatments, medications, and diet as prescribed.

(2) A hospice-trained registered nurse must be on duty 24 hours per day to provide direct patient care and supervision of all nursing services.

R432-750-26. Inpatient Hospice Infection Control.

(1) The hospice shall develop and implement an infection control program to protect patients, family and personnel from hospice or community associated infections.

(2) The hospice administrator and medical director shall develop written policies and procedures governing the infection control program.

(3) All employees shall wear clean garments or protective clothing at all times, and practice good personal hygiene and cleanliness.

(4) The hospice shall develop and implement a system to investigate, report, evaluate, and maintain records of infections among patients and personnel.

(5) The hospice shall comply with OSHA Blood Borne Pathogen Standards, 29 CFR 1910.1030, July 1, 1998, which is adopted and incorporated by reference.

R432-750-27. Pharmaceutical Services.

(1) The hospice shall establish and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(2) A licensed pharmacist shall supervise pharmaceutical services. The pharmacist's duties shall include, but not be limited to the following:

(a) advise the hospice and hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal, and record keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;

(b) inspect all drug storage areas at least monthly; and

(c) conduct patient drug regiment reviews at least monthly or more often if necessary, with recommendations to physicians and hospice staff.

(3) The hospice shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(4) The pharmaceutical service must ensure that drugs and biologicals are labeled based on currently accepted professional principles, and include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(5) The hospice must provide secure storage for medications. Medications that require refrigeration must be maintained between 36 and 46 degrees F.

(6) The hospice must provide separately locked compartments for storage of controlled drugs as listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as well as other drugs subject to abuse. Only authorized personnel, in accordance with State and Federal laws, shall have access to the locked medication compartments.

(7) Controlled drugs no longer needed by the patient shall be disposed of by the pharmacist and a registered nurse. The hospice must maintain written documentation of the disposal.

(8) An inpatient hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit monthly, or more often as necessary.

R432-750-28. Inpatient Hospice Patient's Rights.

(1) In addition to R432-750-11, the hospice shall honor each patient's rights as follows:

(a) the right to exercise his/her rights as a patient of the facility and as a citizen or resident of the United States;

(b) the right to be free of mental and physical abuse;

(c) the right to be free of chemical and physical restraints for the purpose of discipline or staff convenience;

(d) the right to have family members remain with the patient through the night;

(e) the right to receive visitors at any hour, including

small children;

(f) the right for the family to have privacy after a patient's death;

(g) the right to keep personal possessions and clothing as space permits;

(h) the right to privacy during visits with family, friends, clergy, social workers, and advocacy representatives;

(i) the right to send and receive mail unopened; and have access to telephones to make and receive confidential calls;

(j) the right to have family or responsible person informed by the hospice of significant changes in the patient's condition or needs;

(k) the right to participate in religious and social activities of the patient's choice;

(l) the right to manage and control personal cash resources;

(m) the right to receive palliative treatment rather than treatment aimed at intervention for the purpose of cure or prolongation of life;

(n) the right to refuse nutrition, fluids, medications and treatments; and

(o) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night; except that the hospice may lock doors at night for the protection of patients.

(2) The hospice must post patient rights in a public area of the facility.

(3) Restraints ordered to treat a medical condition must comply with the requirements of R432-150-14.

R432-750-29. Report of Death.

(1) The hospice shall have a written plan to follow at the time of a of patient's death. The plan shall include:

(a) recording the time of death;

(b) documentation of death;

(c) notification of attending physician responsible for signing death certificate;

(d) notification of next of kin or legal guardian;

(e) authorization and release of the body to the funeral home;

(2) The hospice must notify the Department of any death resulting from injury, accident, or other possible unnatural cause.

R432-750-30. First Aid.

(1) The hospice shall ensure that at least one staff person is on duty at all times who is certified in cardiopulmonary resuscitation and has training in basic first aid, the Heimlich maneuver and emergency procedures.

(2) First aid training refers to any basic first aid course approved by the American Red Cross, Utah Emergency Medical Training Council, or any course approved by the department.

(3) Each hospice, except those attached to a medical unit, shall have a first aid kit available at a designated location in the facility.

(4) Each hospice shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

R432-750-31. Safeguards for Patients' Monies and Valuables.

(1) The hospice must safeguard patients' cash resources, personal property, and valuables which have been entrusted to the licensee or hospice staff.

(2) A hospice is not required to handle patient's cash resources or valuables. However, if the hospice accepts a patient's cash resources or valuables, then the hospice must safeguard the patient's cash resources in accordance with the following:

(a) No licensee or hospice staff member may use patients' monies or valuables as his own or mingle them with his own. Patients' monies and valuables shall be separated, and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The licensee must maintain accurate records of patients' monies and valuables entrusted to the licensee.

(c) Records of patients' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, and an account for each patient and supporting receipts filed in chronological order.

(d) Each account shall be kept current with columns for debits, credits, and balance.

(e) Records of patients' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished for funds received.

(f) All money entrusted with the facility in a patient account in excess of $150 must be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each inpatient hospice must maintain a separate account for patient funds specific to that inpatient hospice and shall not commingle with patient funds from another inpatient hospice.

(4) Upon discharge, a patient's money and valuables, which have been entrusted to the licensee, shall be returned to the patient that day. Money and valuables kept in an interest-bearing account shall be available to the patient within three working days.

(5) Within 30 days following the death of a patient, except in a medical examiner case, the patient's money and valuables entrusted to the licensee shall be surrendered to the responsible persons, or to the administrator of the estate.

R432-750-32. Emergency and Disaster.

(1) The hospice is responsible for the safety and well-being of patients in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop plans coordinated with the state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all patients and include arrangements for staff response, or provisions of additional staff to ensure the safety of any patient with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing patients, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and patients to assure prompt and efficient implementation.

(c) The licensee and the administrator shall review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The hospices's emergency and disaster response plans shall address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport patients and staff to a safe place within the hospice or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the patients' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the hospice during an emergency;

(j) delivery of essential care and services to hospice occupants when personnel are reduced by an emergency; and

(k) maintenance of safe ambient air temperatures within the facility.

(i) Emergency heating must have the approval of the local fire department.

(ii) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the patients in the hospice. The person in charge shall take immediate action in the best interests of the patients.

(iii) The hospice shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the hospice that may exacerbate the medical condition of patients.

(4) Personnel and patients shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The hospice shall:

(a) annually review the procedures with existing staff and patients;

(b) hold simulated disaster drills semi-annually; and

(c) document all drills, including date, participants, problems encountered, and the ability of each patient to evacuate.

(5) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the hospice, relieve subordinates, and take charge.

(6) Each inpatient hospice shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, a first aid kit, and a radio.

(7) The hospice shall post the following information in appropriate locations throughout the facility:

(a) the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

(8) The hospice must post emergency telephone numbers at each nursing station.

(9) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

R432-750-33. Food Service.

(1) The hospice may provide dietary services directly, or through a written agreement with a food service provider.

(2) The hospice food service shall comply with the R392-100, Utah Department of Health Food Service Sanitation Rule.

(3) The hospice must maintain for Department review all inspection reports by the local health department.

(4) If the hospice accepts patients requiring therapeutic or special diets, the hospice shall have an approved dietary manual for reference when preparing meals.

(5) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(6) The hospice must employ or contract with a certified dietician to provide documented quarterly consultation if patients requiring therapeutic diets are admitted.

(7) The hospice must ensure that sufficient food service personnel are on duty to meet the needs of patients.

(8) While performing food service duties, the cook and other kitchen staff shall not perform concurrent duties outside the food service area.

(9) All persons who prepare or serve food shall have a current Food Handler's Permit.

R432-750-34. Nutrition and Menu Planning.

(1) The hospice shall provide at least three meals or their equivalent daily.

(2) Meals shall be served with no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is available in the evening.

(3) The hospice must have between meal snacks of nourishing quality available on a 24 hour basis.

(4) A different menu shall be planned for and available for each day of the week.

(5) The hospice shall ensure that patients' favorite foods are included in their diets whenever possible.

(6) The hospice shall maintain at least a one-week supply of non-perishable food and a three-day supply of perishable food.

(7) All food shall be of good quality, palatable, and attractively served.

R432-750-35. Pets in the Facility.

(1) A hospice may permit patients to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinances.

(2) Pets must be clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets shall be kept in appropriate enclosures.

(5) Pets that are not confined shall be under leash control, or voice control.

(6) Pets that are kept at the facility shall have documented current vaccinations.

(7) Upon approval of the administrator, family members may bring patients' pets to visit. Visiting pets must have current vaccinations.

(8) Hospices with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling of droppings and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in food preparation, storage or central dining areas, or in any area where their presence would create a significant health or safety risk to others.

R432-750-36. Laundry Services.

(1) The hospice must provide laundry services to meet the needs of the patients.

(2) If the hospice contracts for laundry services, the hospice must obtain a signed, dated agreement from the contracted laundry service that details all services provided. The contracted laundry service must meet the requirements of R432-750-36(3)(c) through (f).

(3) Each hospice that provides in-house laundry services must meet the following requirements:

(a) The hospice must maintain a supply of clean linen to meet the needs of the patients.

(b) Clean bed linens shall be changed as often as necessary, but no less than twice each week.

(c) Soiled linen and clothing shall be stored separate from clean linen and not allowed to accumulate in the facility.

(d) Laundry equipment shall be in good repair.

(e) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(f) Personnel shall handle, store, process, and transport linens in a manner to minimize contamination by air-borne particles and to prevent the spread of infection.

R432-750-37. Maintenance Services.

(1) The hospice shall provide maintenance services to ensure that equipment, buildings, furnishings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) The hospice shall conduct a pest control program through a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition with regard to ice, snow, and other hazards.

R432-750-38. Waste Storage and Disposal.

The hospice must provide facilities and equipment for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using techniques acceptable to the Department of Environmental Quality and the local health authority.

R432-750-39. Water Supply.

(1) Hot water provided to patient tubs, showers, whirlpools, and hand washing facilities shall be regulated for safe use within a temperature range of 105 - 120 degrees F.

(2) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the above temperatures.

R432-750-40. Housekeeping Services.

(1) The hospice must provide housekeeping services to maintain a clean, sanitary, and healthful environment.

(2) If the hospice contracts for housekeeping services with an outside entity, the hospice must obtain a signed and dated agreement that details the services provided.

(3) The hospice must provide safe, secure storage of cleaners and chemicals. In areas with potential access by children or confused disoriented patients, cleaners and chemicals must be locked in a secure area to prevent unauthorized access.

(4) Personnel engaged in housekeeping or laundry services may not be concurrently engaged in food service or patient care.

(5) The hospice must establish and implement policies and procedures to govern the transition of housekeeping personnel to food service or direct patient care duties.

R432-750-41. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities
November 6, 2000 26-21-5
Notice of Continuation September 27, 2007 26-21-6

R501. Human Services, Administration, Administrative Services, Licensing.
R501-14. Background Screening.
R501-14-1. Authority and Purpose.

(1) This Rule is authorized by and implements Sections 62A-2-108.3, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-104.3, 62A-5-103.5, 78-30-3.5(2)(a), and 78-30-3.6.

(2) This Rule establishes the circumstances under which an applicant may have direct access or provide services to a child or vulnerable adult when the person has a criminal history record, is listed in the Licensing Information System or the statewide database of the Division of Aging and Adult Services, or when juvenile court records show that a court made a substantiated finding under Section 78-3a-320 that the person committed a severe type of child abuse or neglect.

(3) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" may include "severe emotional abuse", "severe physical abuse", and "emotional or psychological abuse", as these terms are defined in Sections 62A-4a-101 and Section 62A-3-301.

(2) "Applicant" means a person whose identifying information is submitted to the Department of Human Services Office of Licensing under Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78-30-3.5(2)(a), and 78-30-3.6.

(3) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(4) "Child" is defined in Section 62A-2-101.

(5) "Comprehensive Review Committee" means the Committee appointed to conduct comprehensive reviews in accordance with Section 62A-2-120.

(6) "Direct Access" is defined in Section 62A-2-101.

(7) "Direct Service Worker" is defined in Section 62A-5-101.

(8) "Directly supervised" is defined in 62A-2-120(5).

(9) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or an agency approved by the Office of Licensing.

(10) "Human services program" is defined in Section 62A-2-101.

(11) "Identifying information" means an applicant's:

(a) current and former names, aliases, and addresses,

(b) date of birth,

(c) social security number, and

(d) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address; and

(e) Identifying information includes an applicant's fingerprints when required by law or rule, certified copies of applicable court records, and other records specifically requested by the Office of Licensing.

(12) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(13) "Neglect" may include "severe neglect", as these terms are defined in Sections 62A-4a-101 and 62A-3-301.

(14) "Personal Care Attendant" is defined in Section 62A-3-101.

(15) "Statewide Database" of the Division of Aging and Adult Services is created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(16) "Substantiated" is defined in Sections 62A-3-301 and 62A-4a-101.

(17) "Supported" is defined in Section 62A-4a-101.

(18) "Vulnerable Adult" is defined in Section 62A-2-101.

R501-14-3. Background Screening Procedure.

(1)(a) An applicant for initial background screening or annual background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office of Licensing, and attach all required identifying information.

(b) An applicant for annual background screening renewal shall submit a background screening application and identifying information no later than fourteen days preceding the expiration date of the current background screening approval.

(c) An applicant for initial background screening or annual background screening renewal shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(2)(a) An applicant for initial background screening or annual background screening renewal who has not continuously lived in Utah for the five years immediately preceding the day the application is submitted shall submit fingerprints, and a cashiers' check or money order for the cost of a FBI national criminal history record check, with the background screening application.

(b) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant has spent six or more consecutive weeks outside Utah, including but not limited to education, volunteer or employment activities, military duty, or vacations.

(c) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant presents an out-of-state driver license or an out-of-state identification card.

(d) Notwithstanding any other provision of Rule R501-14, an applicant shall submit fingerprints if the background screening is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody.

(3)(a) Notwithstanding Subsection R501-14-3(2)(a), an applicant for background screening who has continuously lived in Utah for the five years immediately preceding the day the application is submitted, except for time spent outside of the United States and its territories, is not required to submit fingerprints.

(b) An applicant for annual background screening renewal who has continuously lived in Utah at all times since the date of the initial background screening approval is not required to submit fingerprints with the renewal application.

(4) An applicant who has lived outside of the United States during the five years immediately preceding the date of the application shall attach an original or certified copy of:

(a) a criminal history report from each country lived in;

(b) a letter of honorable release from U.S. military or full-time ecclesiastical service, from each country lived in; or

(c) other written verification of criminal history from each country lived in, as approved by the Office of Licensing Background Screening Unit supervisor.

(5)(a) An applicant shall submit the completed application and consent form, and all required identifying information, to the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging

(for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only).

(b) The applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), Area Agency on Aging (for Personal Care Attendant applicants only), or Division of Services for People With Disabilities (for Direct Service Worker applicants only), shall:

(i) inspect the applicant's state driver's license or state identification card and make a good faith effort to determine that it does not appear to have been forged or altered;

(ii) inspect the copy of applicant's state driver's license or state identification card and make a good faith effort to determine that it appears to be identical to the original; and

(iii) forward the inspected copy of applicant's state driver's license or state identification card, the completed application and consent form, and all other required identifying information, to the Office of Licensing background screening unit within five calendar days after the applicant completes and signs the application.

(6) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(7)(a) Identifying information submitted pursuant to Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78-30-3.5(2)(a), and 78-30-3.6 shall be used to search criminal history records, the Licensing Information System, juvenile court records under Section 78-3a-320, and the statewide database.

(i) Identifying information submitted in accordance with Section 62A-2-120(1)(f) shall also be used to check the child abuse and neglect registry in each state where the applicant resided in accordance with Section 62A-2-120(1)(g).

(b) In accordance with Section 62A-5-103.5, a direct service worker who is a direct ancestor or descendant, or who is an aunt, uncle or sibling of the person to whom services are rendered, shall be exempt from a criminal history record search, but shall remain subject to a search of the Licensing Information System, juvenile court records under Section 78-3a-320, and the statewide database.

(8)(a) Except as permitted by Section 62A-2-120(5), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office of Licensing.

(b) Except as permitted by Section 62A-2-120(5), an applicant seeking annual background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office of Licensing.

(9) Upon receipt of a signed, legible, completed application and identifying information, the Office of Licensing shall:

(a) investigate and make a preliminary determination of whether the applicant has been charged with any crime and the disposition of any charges; and

(b) search the Licensing Information System, juvenile court records, and the statewide database, and make a preliminary determination of whether the applicant has any supported or substantiated findings of abuse, neglect or exploitation.

(10)(a) The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.

(b) The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.

(11) The Office of Licensing may notify an applicant of its preliminary determination that the applicant may have a criminal history outside of Utah, and require an applicant to:

(a) submit fingerprints, and a cashier's check or money order for the cost of a nationwide criminal history check, within 15 calendar days of a letter of notification;

(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 15 calendar days of a letter of notification.

(12)(a) The Office of Licensing shall send all written communications to the applicant or to the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) by first-class mail.

(b) A human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) shall provide the applicant with a copy of all written communication from the Office of Licensing within 5 calendar days after the date it is received.

(13) The applicant shall promptly notify the Office of Licensing of any change of address while the application remains pending.

R501-14-4. Results of Screening.

(1)(a) The Office of Licensing shall approve an application for background screening in accordance with Section 62A-2-120(2).

(b) The Office of Licensing shall notify the applicant, the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), that the applicant's background screening application is approved.

(c) The approval granted by the Office of Licensing shall be valid for a period not to exceed one calendar year from the date of approval.

(i) Notwithstanding Subsection R501-14-4(1)(c), an applicant's background screening approval that is issued for the purpose of a preplacement adoptive evaluation in accordance with Section 78-30-3.5 shall be valid for 18 calendar months from the date of approval.

(d) An approval granted by the Office of Licensing shall not be transferable, except as provided in Section R501-14-9.

(e) Except as provided in Section R501-14-9, a new application shall be submitted each time an applicant may have direct access or provide services to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(2) The Office of Licensing shall deny an application for background screening in accordance with Subsections 62A-2-120(3) and 62A-2-120-(8).

(3) The Office of Licensing shall refer an application to the Comprehensive Review Committee for a comprehensive review in accordance with Section 62A-2-120(4).

R501-14-5. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

(a) the Executive Director's Office;
(b) the Division of Aging and Adult Services;
(c) the Division of Child and Family Services;
(d) the Division of Juvenile Justice Services;
(e) the Division of Services for People with Disabilities;
(f) the Division of Substance Abuse and Mental Health;
(g) Public Guardian; and
(h) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(4).

R501-14-6. Comprehensive Review Investigation.

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office of Licensing first sending the applicant a written notice that:

(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(4)(b), and the applicant may specifically address these issues; and

(d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office of Licensing shall gather information described in Section 62A-2-120(4)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office of Licensing may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i) The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.

(ii) The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.

R501-14-7. Comprehensive Review Determination.

(1) The Comprehensive Review Committee shall only consider applications presented by the Office of Licensing. The Comprehensive Review Committee shall evaluate the information provided by the Office of Licensing and any information provided by the applicant.

(2) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(3) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(4) The Office of Licensing shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and send written notification to the applicant, the applicant's licensing specialist, the licensed human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), or a direct service worker's employer (if any).

R501-14-8. Post-Approval Responsibilities.

(1) An applicant, a human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), and a direct service worker's employer (if any), shall immediately notify the Office of Licensing if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78-3a-320, or the statewide database after a background screening application is approved.

(a) An applicant who is associated with a human services program shall immediately notify the human services program if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78-3a-320, or the statewide database.

(2) An applicant who has received an approved background screening shall resubmit an application and identifying information to the Office of Licensing within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78-3a-320.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the statewide database, or juvenile court records under Section 78-3a-320, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and identifying information have been resubmitted to the Office of Licensing and a current background screening approval is received from the Office of Licensing.

(4)(a) An applicant charged with an offense for which there is no final disposition shall inform the Office of Licensing of the current status of each case.

(b) The Office of Licensing shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.

(c) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.

(5) The Office of Licensing may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78-3a-320; or

(b) fails to provide required current status information; and

(c) will likely create a risk of harm to a child or vulnerable adult, as determined by the Office of Licensing.

(6) The Office of Licensing shall process identifying information received pursuant to Subsection R501-14-8(2) in accordance with Rule R501-14.

R501-14-9. Confidentiality.

(1) The Office of Licensing may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant, the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), and in accordance with the Government Records Access and Management Act, Section 63-2-101, et seq.

(2) Except as described below, background screening approvals may not be transferred or shared between human service programs.

(a) A licensed child-placing agency may provide the approval granted by the Office of Licensing to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

(b) A licensed human services program may provide a copy of the approval granted by the Office of Licensing to another licensed human services program with the prior written consent of the person who is the subject of the approval.

(c) A licensed human services program may permit an individual to have direct access to a child or vulnerable adult if:

(i) the program receives a copy of the approval granted by the Office of Licensing for the person from another licensed human services program;

(ii) both the sending and receiving human services programs are licensed to provide the same categories of services to the same client populations; and

(iii) the program receives written confirmation from the Office of Licensing that the background screening approval has not expired or been revoked.

R501-14-10. Retention of Background Screening Information.

A human services program shall retain the background screening information of all individuals associated with the program for a minimum of eight years after the termination of the individual's association with the program.

R501-14-11. Expungement.

An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

R501-14-12. Administrative Hearing.

A notice of agency action that denies or revokes the applicant's background screening application shall inform the applicant of the right to appeal in accordance with Administrative Rule 497-100 and Section 63-46b-0.5, et seq.

R501-14-13. Compliance.

Any licensee that is in operation on the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.

KEY: licensing, background screening, fingerprinting
September 15, 2007 62A-2-108 et seq.

R512. Human Services, Child and Family Services.
R512-32. Children with Reportable Communicable Diseases.
R512-32-1. Definitions.

(1) "Communicable Disease" means any infectious condition reportable to the Utah Department of Health, pursuant to Section 26-6-3. These diseases are listed in the Code of Communicable Disease Rules (R386-702-2 and R386-702-3). In addition, for the purposes of this rule, human immunodeficiency virus (HIV) seropositivity will be considered a communicable disease. Non-reportable minor illnesses such as strep, flu, and colds are excluded from this definition.

(2) "Provider" means a person authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services. (Other divisions of the Department, for example, the Division of Juvenile Justice Services, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

(3) "UDHS" means the Utah Department of Human Services.

(4) "DCFS" means the Division of Child and Family Services.

(5) "UDOH" means the Utah Department of Health, Bureau of Epidemiology or Bureau of HIV/AIDS Prevention and Control.

(6) "HIV Screening" means a laboratory test (Elisa Test) to detect evidence of infection with the HIV; the causative agent of acquired immunodeficiency syndrome (AIDS).

(7) "HIV Seropositivity" means the presence in an individual, as detected by confirmatory laboratory testing (Western Blot Test), of an antibody or antigen to the HIV.

(8) "High Risk Behaviors" means behaviors which may include injectable drug use, sharing intravenous needles and syringes, multiple sex partners, unprotected sex that increase the risks of contracting Hepatitis B, AIDS, HIV disease, and sexually transmitted diseases such as: gonorrhea, syphilis, chancroid, granuloma inguinale, chlamydial infections, pelvic inflammatory disease, and lymphogranuloma venereum.

(9) "Children at Risk" means an infant or child born to parent(s) engaging in or who have a history of engaging in high risk behaviors, or a child or youth who has been sexually abused by a person who engages in or has a history of engaging in high risk behaviors.

(10) "Contact" means an individual who has been exposed to a communicable disease through a known mode of transmission.

(11) "Controlled" means a classification of information (medical, psychiatric, or psychological) under the Government Records Access and Management Act (GRAMA), Section 63-2-303.

R512-32-2. Confidentiality.

(1) In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person (including UDHS personnel) who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include: the Division of Child and Family Services administrators, program specialists, supervisor, and caseworker, the foster parent or provider, UDOH, the Guardian ad Litem, the Juvenile Court Judge, and persons providing psychological or medical treatment.

(2) Due to the GRAMA Act and state confidentiality laws, any documentation in the case record regarding HIV status or any other communicable disease information must be filed under the "Medical/ Assessment" section of the case record.

R512-32-3. Identification and Testing of Children with Communicable Disease.

(1) Testing at Agency's Request.

(a) Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of DCFS. When DCFS has custody and guardianship of a child who may have a communicable disease, the State has the authority to obtain a medical evaluation to determine the child's communicable disease status.

(b) If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker.

(c) If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact UDOH promptly for consultation.

(d) A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high risk behaviors as defined in R512-32-1(H), a child who may be at risk as defined in R512-32-1(I), or medical information received by the worker, foster parent or provider.

(e) Communicable disease testing requires written, informed consent. If DCFS has custody and guardianship of a child, the State (DCFS) has the authority to provide written, informed consent for communicable disease testing. If a child under the custody and guardianship of DCFS refuses to be tested, the worker is required to contact UDOH and the Attorney General's office immediately upon hearing of the refusal.

(f) When a parent of a child in the custody of DCFS is known or reports to be involved in high risk behaviors, the worker shall contact UDOH for consultation.

(g) All contacts with UDOH shall be documented in the child's case record and filed under the "medical assessment" section of that record.

(2) Testing at Minor's Request.

(a) A minor may seek HIV testing without parental or UDHS consent. When the minor requests the test, the right to disclose test results belongs to the minor (Section 26-6-18). If the minor chooses to disclose the test results to UDHS, UDHS cannot disclose the test results to any other person, including the Guardian Ad Litem. Upon disclosure to UDHS of a positive test result, the caseworker shall contact UDOH for consultation and follow up.

(b) When a record of HIV testing is subpoenaed, the caseworker shall immediately contact the Attorney General's office or the DCFS program specialist or DCFS assistant director.

R512-32-4. Preparation for Placement in Foster or Out-of-Home Care.

(1) Prior to placing a child with a communicable disease, or upon discovering a child has a communicable disease, the DCFS caseworker shall contact UDOH for consultation. After consultation with UDOH and prior to placing the child, the DCFS worker shall staff the case with their supervisor, assistant director, the provider (as defined in R512-32-1, Definitions), as well as the DCFS program specialist or DCFS assistant director to assess the health risk to the child, to the provider, and to any other persons in the home. After the consultation with the team, UDOH, the caseworker, and the provider shall define the precautions necessary to mitigate the health risk.

R512-32-5. Considerations Regarding Placement of a

Child With a Communicable Disease.

(1) A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this decision, the caseworker shall refer the provider to UDOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

(2) If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in his or her file, as well as the child's case record under the Medical Section.

(3) If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in R512-32-5(A) and R512-32-5(B) shall be accomplished without delay.

R512-32-6. Pick-Up Orders.

(1) Pick-up orders filed with the Juvenile Court may state that the youth is engaging, or has a history of engaging, in high risk behaviors. The order or supplementary forms cannot include information that the child has or may have a communicable disease.

R512-32-7. Returning a Minor to the Parent's Custody.

(1) If a minor in DCFS custody tests positive for the HIV disease and the minor is being returned home, UDOH shall be responsible for informing natural parents of the child's positive test. Both caseworker and UDOH shall coordinate the placement of the child back home. The caseworker shall assist the parents in planning for the child's care and medical follow up needs.

(2) If a minor in DCFS custody tests positive for a communicable disease other than HIV disease and the minor is being returned home, the caseworker is responsible for informing the natural parents of the child's positive test and if needed, referring them to UDOH for consultation and appropriate medical resources.

R512-32-8. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive.

(1) When a minor in the custody of DCFS is identified by the Health Department as having been exposed to a person who has tested positive, UDOH shall contact the DCFS foster care specialist or assistant director who shall then contact the appropriate caseworker. The caseworker shall contact UDOH to arrange for the minor to be tested and counseled. The worker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
1993 62A-4a-105
Notice of Continuation September 19, 2007

R527. Human Services, Recovery Services.
R527-3. Definitions.
R527-3-1. Definitions.

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-202, 62A-11-303, 62A-11-401, and 78-45f-101. In addition, the following terms are defined:

2. "ORS" means the Office of Recovery Services.

3. "ORSIS" means the Office of Recovery Services Computer Information System.

4. "BMC" means the Bureau of Medical Collections.

5. "CIC" means the Bureau for Children in Care.

6. "CSS" means Child Support Services.

7. "MSS" means Management Support Services.

8. "CSU" means the Customer Service Unit.

9. "BFS" means the Bureau of Financial Services.

10. "BET" means the Bureau of Electronic Technology.

11. "OT" means the Office of Technology.

12. "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.

13. "IV-D recipient" refers to a person who receives IV-D services.

14. "IV-A" refers to Title IV-A of the Social Security Act.

15. "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.

16. "IV-A recipient" refers to a person who receives IV-A benefits.

17. "UIFSA" refers to Title 78, Chapter 45f (Uniform Interstate Family Support Act) which replaces "URESA", Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).

18. "AFDC" refers to the former Aid to Families with dependent children program.

19. "FEP" refers to the Family Employment Program which is funded by "TANF" (Federal Temporary Assistance for Needy Families).

20. "Pass-through payment" as used in R527-40-1(3) refers to the first $50 of the current support that ORS collected for a month in which the custodial parent received AFDC. The IV-A agency paid this amount to the AFDC household prior to March, 1997.

21. "IRS" refers to the Internal Revenue Service.

22. "TPL" means Third Party Liability.

KEY: child support, welfare

March 19, 2003	**62A-11-103**
Notice of Continuation September 4, 2007	**62A-11-202**
	62A-11-303
	62A-11-401
	78-45f-101

R527. Human Services, Recovery Services.
R527-37. Closure Criteria for Support Cases.
R527-37-1. Closure Criteria for Support Cases.

This rule establishes the criteria a support case must meet in order to be eligible for case closure under federal regulations. The Office of Recovery Services adopts the federal regulations as published in 45 CFR 303.11, October 1, 1991 ed., which are incorporated by reference.

KEY: child support
1992 62A-11-107
Notice of Continuation September 7, 2007

R527. Human Services, Recovery Services.
R527-253. Collection of Child Support Judgments.
R527-253-1. Collection of Child Support Judgments.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) may demand and collect immediate payment in full, or may demand and collect payments that will result in payment in full within a period of time that is deemed to meet the interests of the state in child support judgment matters.

2. ORS/CSS may collect a child support judgment through income withholding, liens, tax refund intercepts, and any other legal remedy available. Initiation of a particular remedy shall not limit ORS/CSS from initiating any other remedy at the same time.

KEY: administrative law, child support
August 17, 1998 62A-11-320
Notice of Continuation September 7, 2007

R527. Human Services, Recovery Services.
R527-255. Substantial Change in Circumstances.
R527-255-1. Substantial Change in Circumstances.

1. A parent may request a less than three year review of a support order based on an alleged substantial change in circumstances. For the request to be complete, the parent must provide documentation of the alleged change at his/her own expense.

2. If the change in circumstances is projected to be temporary, defined as less than 12 months in duration, the office shall not initiate proceedings to adjust the award.

3. If the change in circumstances is projected to be long term or permanent, defined as 12 months or more in duration, the office shall initiate proceedings to adjust the award pursuant to Sections 78-45-7.2 through 78-45-7.21.

KEY: child support
March 14, 2005 78-45-7 through 78-45-7.21
Notice of Continuation September 4, 2007 62A-11-320.5
62A-11-320.6

R527. Human Services, Recovery Services.
R527-300. Income Withholding.
R527-300-1. Income Withholding.

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(5) or R527-300-2, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-2. Determining Delinquency.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-3. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-4. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

R527-300-5. Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-6. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

R527-300-7. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

R527-300-8. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

KEY: child support, income, wages
November 30, 2004 **62A-11-401**
Notice of Continuation September 7, 2007 **62A-11-405**
62A-11-406
62A-11-413
62A-11-414
78-45f-506

R527. Human Services, Recovery Services.
R527-378. Withholding of Social Security Benefits.
R527-378-1. Withholding of Social Security Benefits.

If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.

KEY: child support, social security
January 15, 1999 62A-11-107
Notice of Continuation September 5, 2007

R527. Human Services, Recovery Services.
R527-412. Intercept of Unemployment Compensation.
R527-412-1. Intercept of Unemployment Compensation.

1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.

2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

KEY: child support, unemployment compensation
1992 35A-4-103(5)
Notice of Continuation September 5, 2007 62A-11-401

R527. Human Services, Recovery Services.
R527-601. Establishing or Modifying an Administrative Award for Child Support.
R527-601-1. Documentation of Income.

When complete documentation of current income as required by Subsection 78-45-7.5(5) is not available for both parents in an administrative default, participation, or stipulation proceeding, the office shall use the best evidence available to determine the appropriate child support award, in accordance with Section 78-45-7.3.

R527-601-2. Definition.

Best evidence available shall include the following: an affidavit from a cooperating parent concerning the income of a parent who is not cooperating in providing documentation of his/her income; historical records including old tax returns, pay stubs, employer statements, or Department of Workforce Services records; market rate earned by persons with the same occupation as reported by the Department of Workforce Services; or the federal minimum wage.

R527-601-3. Procedures.

Prior to using the best evidence available to establish or modify an administrative order, the office shall mail a copy of an affidavit describing the evidence to the last known address of the uncooperative parent against whom the evidence is being used.

KEY: child support
October 16, 1997 78-45-7.3
Notice of Continuation September 7, 2007 78-45-7.5

R547. Human Services, Juvenile Justice Services.
R547-10. Ex-Offender Policy.
R547-10-1. Ex-Offender Policy.

The Division and its contracted providers shall not employ any ex-offender convicted of a felony or under the supervision of the criminal justice system, or any misdemeanor convictions for crimes against children under the age of 18. Potential employees with a documented history of drug or alcohol abuse, domestic violence, or sexual offense may also be excluded from employment with the Division.

KEY: ex-convicts, juvenile corrections
November 18, 2003 62A-7
Notice of Continuation September 28, 2007

R590. Insurance, Administration.
R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.
R590-96-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Sections 31A-2-201, and 31A-17-505.

R590-96-2. Purpose.

The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a", the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

R590-96-3. Definitions.

A. As used in this rule 1983 Table "a" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

B. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

C. As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume XLVII of the Transactions of the Society of Actuaries, 1995, and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

D. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the Transactions of the Society of Actuaries (1995) and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

E. The tables identified in R590-96-3.C. and D., are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

R590-96-4. Individual Annuity or Pure Endowment Contracts.

A. Except as provided in Subsections B. and C. of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 2, 1980.

B. Except as provided in Subsection C. of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1999.

D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after July 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

(2) Settlements involving similar actions such as worker's compensation claims; or

(3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

R590-96-5. Group Annuity or Pure Endowment Contracts.

A. Except as provided in Subsections B. and C. of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 2, 1980 under a group annuity or pure endowment contract.

B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1999 under a group annuity or pure endowment contract.

R590-96-6. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows: $q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$; where the q_x^{1994} and AA_xs are as specified in the 1994 GAR Table.

R590-96-7. Separability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances may not be affected by it.

KEY: insurance law
March 16, 1999 31A-2-201
Notice of Continuation September 14, 2007 31A-17-505

R590. Insurance, Administration.
R590-216. Standards for Safeguarding Customer Information.
R590-216-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999(15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act. The commissioner is also authorized under Subsection 31A-23-317(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

R590-216-2. Purpose and Scope.

(1) This rule establishes standards applicable to the department's licensees to assist them in developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

(2) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:

(a) to ensure the security and confidentiality of customer records and information;

(b) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(c) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

(3) Under Section 505(b)(2) state insurance regulatory authorities are to implement the standards prescribed under Section 501(b) by rule with respect to persons engaged in providing insurance.

(4) Section 507 provides, among other things, that a state rule may afford persons greater privacy protections than those provided by Subtitle A of Title V of the Gramm-Leach-Bliley Act. This rule requires that the safeguards established pursuant to the rule shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information that licensees of the department obtain from their customers.

R590-216-3. Definitions.

For purposes of this rule, the following definitions apply:

(1) "Customer" means a customer of the licensee as the term customer is defined in Rule R590-206, Privacy of Consumer Financial and Health Information Rule, Subsection 4(9).

(2) "Customer information" means nonpublic personal information as defined in Subsection R59-206-4(19) about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

(3) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(4) "Licensee" means a licensee as that term is defined in Subsection R590-206-4(17)(a), except that "licensee" shall not include: a purchasing group; manufacturer or seller warranty provider and manufacturer or seller service contract provider exempted by R590-210, Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contract; or an unauthorized insurer in regard to the excess line business conducted pursuant to Section 31A-15-103.

(5) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

R590-216-4. Information Security Program.

Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

R590-216-5. Objectives of Information Security Program.

A licensee's information security program shall be designed to:

(1) Ensure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

R590-216-6. Examples of Methods of Development and Implementation.

The actions and procedures described in this section are examples of methods of implementation of the requirements of Sections 4 and 5 of this rule. These examples are non-exclusive illustrations of actions and procedures that licensees may adopt to implement Sections 4 and 5 of this rule.

(1) For risk assessment, the licensee may:

(a) identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;

(b) assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

(c) assess the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

(2) For risk management and control, the licensee may:

(a) design its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

(b) train staff, as appropriate, to implement the licensee's information security program; and

(c) regularly test or otherwise regularly monitor the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

(3) For service provider arrangement oversight, the licensee may:

(a) exercise appropriate due diligence in selecting its service providers; and

(b) require its service providers to implement appropriate measures designed to meet the objectives of this

rule, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

(4) For program adjustment, the licensee may monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

R590-216-7. Determined Violation.

Violation of any provision of the rule will result in appropriate enforcement action by the department, which may include forfeiture, penalties, and revocation of license as provided in Section 31A-2-308.

R590-216-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 120 days from the effective date of the rule.

KEY: insurance

September 26, 2002	**31A-2-201**
Notice of Continuation September 6, 2007	**31A-2-202**
	31A-23-317
	15 U.S.C. 6801
	15 U.S.C. 6805
	15 U.S.C. 6807

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-1. Minimum Wage, Clarify Tip Credit, and Enforcement.
R610-1-1. Authority.

This rule is enacted under authority of Section 34-40-105.

R610-1-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Section 34-40-102.

A. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and includes the personnel within the Division responsible for enforcement.

B. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

R610-1-3. Coverage.

A. All employers employing workers in the state of Utah, except those exempted by Section 34-40-104, shall pay the established minimum hourly wages of $5.85 an hour for all hours employed effective through September 8, 2007; $6.55 an hour for all hours employed effective July 24, 2008; and $7.25 an hour for all hours employed effective July 24, 2009.

B. As per Sections 34-23-301 and 34-40-103, effective through July 23, 2007, a minor employee shall be paid at least $4.25 per hour for the first 90 days of employment with an employer; and thereafter, minimum wage established in subsection A of this rule.

C. Any employer claiming exemption under Subsection 34-40-104(1)(k), shall provide to the Division a statistical report of the average wage paid within 60 days of the end of the regular operating season. The Division may, upon notice, perform an on-site inspection to verify the report in accordance with Sections 34-40-201 and 34-40-203.

R610-1-4. Tips, Gratuities, and Commissions.

A. An employer may credit the tips received by tipped employees (an example would be waiters and waitresses) against the employer's minimum wage obligation. The tips must be received by the employee, reported to the employer, and must reach a threshold of at least $30.00 per month before credit can be allowed.

B. An employer has a cash wage obligation in meeting the required minimum wage of at least $2.13 per hour. If an employee's tips combined with the employer's cash wage obligation of $2.13 per hour do not equal the minimum hourly wage requirement, the employer must increase its cash wage obligation to make up the difference.

C. All tips or gratuities shall be retained by the employee receiving the tips or gratuities. However, this requirement does not preclude pooling of tips or gratuities to be divided equally between those employees who customarily and regularly receive tips or gratuities.

1. A bona fide tip pooling or sharing arrangement may include employees who customarily and regularly receive tips, such as waiters, bellhops, waitresses, countermen, busboys, and service bartenders.

2. Employees such as dishwashers, chefs, and janitors are not considered tipped employees and may not participate in tip pooling.

D. Every employer intending to exercise the tip or gratuity credit must so inform each affected employee at the time of hire.

E. Where tips are charged on a credit card, and the employer must pay the credit card company a percentage of the bill for its use, the employer may reduce the amount of the credit card tips paid over to the employee by a percentage no greater than that charged by the credit card company.

F. In computing the minimum wage, tips, gratuities, and commissions must be counted in the payroll period in which the tip, gratuity or commission is earned.

G. This section does not apply to tips or commissions as delineated in Section 34-40-104(1)(j).

R610-1-5. Enforcement of Minimum Wage.

A. The Division may enforce compliance with the state minimum wage in the same manner as outlined in R610-3.

B. When more than one employee is affected by noncompliance of minimum wage requirements, the Division shall treat this alleged infraction of noncompliance as a class action.

C. The Division may commence agency action in accordance with Section 63-46b-3 to investigate and determine compliance or noncompliance.

D. If an employer is found in noncompliance with the state minimum wage requirements, that employer shall be subject to penalties under Section 34-40-204.

E. If the employees determine that a civil action to enforce compliance with state minimum wage is necessary, they may bring an action under Section 34-40-205.

R610-1-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve a complaint under minimum wage requirements is accomplished by the complainant filing a complaint form. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63-46b-3(2).

R610-1-7. Investigation and Enforcement.

If, upon investigation, the Division concludes that a violation of Sections 34-40-103, 34-40-104, 34-40-201, or 34-40-203 has occurred it may impose a penalty pursuant to Sections 34-40-202 and 34-40-204.

R610-1-8. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: wages, minors, labor, time
September 8, 2007 34-23-101 et seq.
Notice of Continuation November 30, 2006 34-28-1 et seq.
34-40-101 et seq.
63-46b-1 et seq.

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 = 91,333 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

R655. Natural Resources, Water Rights.
R655-6. Administrative Procedures for Informal Proceedings Before the Division of Water Rights.
R655-6-1. Authority and Effective Date.

A. These rules establish and govern the administrative procedures for informal adjudicative proceedings before the Division of Water Rights as required by Section 63-46b-5.

B. These rules govern all informal adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by R655-2.

R655-6-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division of Water Rights are hereby designated as informal proceedings and include, but are not limited to, all requests for agency action and notices of agency action concerning applications to appropriate water, change applications, exchange applications, applications to segregate; requests for reinstatement and extension of time; proofs of appropriation and change; applications for extension of time within which to resume use of water and proofs of resumption of use; applications to renovate or replace existing wells; permits and authorizations for dam construction, repair and use; applications and other procedures for utilization of geothermal resources; licenses and other permits for water well drillers; applications for stream alteration; and other adjudicative proceedings involving water right administration.

R655-6-3. Definitions.

A. "Adjudicative Proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63, Chapter 46b shall not be included within this definition.

B. "Division" means the Division of Water Rights.

C. "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

D. "Staff" means the Division of Water Rights staff.

E. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or other agency.

F. "Party" means the Division or other person commencing an adjudicative proceeding, all respondents, all protestants, all persons permitted by the Presiding Officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

G. "Presiding Officer" means the State Engineer, or an individual or body of individuals designated by the State Engineer, designated by the agency's rules, or designated by statute to conduct a particular adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division or any other person.

I. "Application" means any application which has been filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6, and shall include, but not be limited to, applications enumerated in R655-6-5.B.3. An application is also a request for agency action. The substantive rules governing the filing and perfecting of these documents are specified in the above Chapters and in other Division rules, and R655-6 governs only the administrative procedures for those applications which have been properly filed.

J. "Applicant" is a person applying for an application.

K. "Protestant" means a person who timely protests an application before the State Engineer pursuant to Section 73-3-7 or who files a protest pursuant to Section 73-3-13.

R655-6-4. Construction.

A. These rules shall be construed in accordance with Title 63, Chapter 46b, and these rules supersede any conflicting provision of procedural rules promulgated by the Division.

B. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division.

C. Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

D. Any pleading or other document required to be filed with the Division shall be considered to be filed on the date the signed original is actually deposited with the Division and not on the date of postmark.

R655-6-5. Commencement of Proceedings.

A. Proceedings Commenced by the Division.

1. All informal adjudicative proceedings commenced by the Division shall be initiated by a notice of agency action as provided by applicable statute, Division policies, and Subsection 63-46b-3(2).

2. The Presiding Officer may require the person against whom the agency action is commenced to file a response within 30 days of the mailing or publication date of the notice of agency action.

B. Proceedings Commenced by Persons Other Than the Division.

1. All informal adjudicative proceedings commenced by persons other than the Division shall be commenced by either completing and submitting prepared forms requesting agency action which are available at the Division or, if no forms are required to initiate a particular proceeding, by submitting in writing a request for agency action which shall include at least the following:

a. the names and addresses of all persons to whom a copy of the request for agency action is being sent;

b. the Division's file number or other reference number, if known;

c. the date that the request for agency action was mailed;

d. a statement of the legal authority and jurisdiction under which agency action is requested;

e. a statement of the relief or action sought from the Division;

f. a statement of the facts and reasons forming the basis for relief or agency action;

g. the name, address and telephone number of the person requesting agency action;

h. the signature of the person requesting agency action; and

i. any filing fees required by statute.

2. For purposes of requests for agency action filed pursuant to Title 73, the adjudicative proceeding commences on the date the request is received by the Division and not on the date of postmark.

3. Forms Requesting Agency Action

The following forms requesting agency action shall be

used by persons requesting a particular agency action and are available from the Division:

a. Application to Appropriate Water
b. Temporary Application to Appropriate Water
c. Application for Permanent Change of Water
d. Application for Temporary Change of Water
e. Application to Segregate a Water Right
f. Request for Reinstatement and Extension of Time
(i) Before Fourteen Years
(ii) After Fourteen Years
g. Proof of Appropriation of Water
h. Proof of Permanent Change of Water
i. Application for Exchange of Water
j. Application for Extension of Time Within Which to Resume Use of Water
k. Proof of Resumption of Use of Water
l. Application to Renovate or Replace an Existing Well
m. Application to Construct a Dam Impounding Less Than 20 Acre-Feet
n. Application for Well Driller's License
o. Permit Application to Alter a Natural Channel

4. Upon receipt of a request for agency action, the Presiding Officer shall promptly review the request and shall act in accordance with Subsections 63-46b-3(3)(d) and (e).

5. Protests filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6 shall be filed in accordance with the governing statutes and these rules.

a. Protests should be filed on letter-sized paper, typewritten and double-spaced, but may be submitted in legible handwritten form. Protests should identify the water right by water right number, state the complete mailing address of the protestant, and should contain a clear, concise statement of the matter relied upon as the basis for the protest, together with an appropriate request for relief. If the name or address of the protestant is not legible, the Division shall not be obligated to give the protestant notice of any further proceedings.

b. Protests signed by more than one person shall be accepted. However, persons filing a multiple-person protest are encouraged to designate a representative for the group of protestants who shall receive all notices on behalf of all who signed the protest. If no representative is designated, each person signing the protest shall be considered a protestant, and shall receive notice of any further proceedings, if their name, mailing address and phone number are clearly legible.

c. Upon the filing of a protest the Presiding Officer shall mail a copy of the protest to the applicant. The applicant may file with the Division an answer to the protest within the time designated by the Presiding Officer. The Presiding Officer shall mail copies of any answer to the protestant, or attorney or authorized representative, if any. The protestant may file a response to the answer with the Division within the time designated by the Presiding Officer. The Presiding Officer shall mail a copy of the response to the applicant.

d. Protests filed after the protest period has expired shall be placed on file and become part of the record. Any person filing a late protest is not a party and may receive notice of any further proceeding, hearing or order.

R655-6-6. Pleadings.

A. Pleadings before the Presiding Officer for administrative hearings may consist of a notice of agency action, a request for agency action, responses, protests, answers to protests, responses to answers, motions together with affidavits, briefs, memoranda of law and fact in support thereof, requests for reconsideration, and other pleadings as allowed by Title 63, Chapter 46b.

B. Motions may be submitted for the Presiding Officer's decision on either written or oral argument, and the filing of affidavits in support or contravention thereof may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

C. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

D. Service of Pleadings.

Except as otherwise specified in R655-6-5.B.5.c., all persons filing pleadings after the request for agency action or the notice of agency action have been filed shall serve copies of the pleadings by regular mail to all parties or their attorney of record or authorized representative on the date of filing the pleadings with the Division. Service upon any attorney or authorized representative constitutes service on the represented party. Service shall be deemed complete on the date of mailing.

E. Post-Hearing Pleadings.

Before or after a hearing is concluded, any party may seek permission from, or may be asked by, the Presiding Officer to file a memorandum or other information. All other parties shall have 20 days, unless shortened or lengthened by the Presiding Officer, from the date of service within which to file responsive pleadings. The filing of any further post-hearing pleadings shall be by permission of the Presiding Officer.

R655-6-7. Hearings.

A. The Division shall hold a hearing if a hearing is required by statute or rule.

B. The Division shall hold a hearing if a hearing is permitted by rule and is requested by a party in writing within 10 days of when the adjudicative proceeding commences, or within the time prescribed in the notice of agency action or by the Presiding Officer.

C. The Division may hold a hearing if a hearing is requested in a timely filed protest.

D. The Division may at its discretion hold a hearing on any adjudicative proceeding to determine matters within its authority.

E. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

F. Hearings shall be held for most adjudicative proceedings in the county where the water source is located or the county where the majority of the parties reside. Hearings may be held outside the county at the discretion of the state engineer.

G. If no hearing is held for a particular adjudicative proceeding, the Division shall within a reasonable time issue a decision pursuant to R655-6-16.

R655-6-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R655-6-9. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of identifying and simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R655-6-10. Continuance.

If application is made to the Presiding Officer within a

reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R655-6-11. Parties to a Hearing.

A. All hearings shall be open to all parties and all parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

B. Any person not a party to the adjudicative proceeding may participate at a hearing as a witness for a party or, upon the consent of the Presiding Officer, may participate as part of the Division's investigative and fact finding powers. Such a person is not a party to the adjudicative proceeding and may not seek judicial review.

R655-6-12. Appearances and Representation.

A. Taking Appearances.

Parties shall enter their appearances at the beginning of a hearing or at a time designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties.

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

2. Any party may be represented by an attorney at law.

R655-6-13. Failure to Appear--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer at his discretion may continue the matter, or may enter an order of default as provided by Section 63-46b-11, or may proceed to hear the matter in the absence of the defaulting party.

R655-6-14. Discovery, Testimony, Evidence and Argument.

A. Discovery is prohibited but the Division may issue subpoenas or other orders to compel production of necessary evidence.

B. All parties shall have access to non-confidential and non-privileged information contained in the Division's files of public record, and to all materials and information gathered in any investigation, to the extent permitted by law.

C. Testimony.

At the hearing, the Presiding Officer shall accept oral or written testimony from any party or witness. Further, the Presiding Officer shall have the right to question and examine any party or witnesses called to present testimony at a hearing. The testimony and statements received at hearings may be under oath.

D. Order of Presentation of Evidence.

Unless otherwise directed by the Presiding Officer at a hearing, the evidence shall be presented first by the party commencing the adjudicative proceeding. Each party may offer rebuttal evidence.

E. Rules of Evidence.

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence may be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may not be excluded solely because it is hearsay.

F. Documentary Evidence.

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

G. Official Notice.

The Presiding Officer may take official notice of the following matters which shall be considered as facts presented at the hearing:

1. Rules, regulations, official and unofficial reports, surveys, maps, investigations, all Division files, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

2. Official documents introduced into the record by proper reference; provided, however, documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

3. Matters of common knowledge and generally recognized technical or scientific facts within the Division's specialized knowledge, and any factual information which the Division may have gathered from a field inspection of the water sources or area involved in the proceeding.

H. Oral Argument and Memoranda.

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R655-6-15. Record of Hearing.

A. A record of any hearing may be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

B. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R655-6-16. Orders.

A. After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files or records and on the facts presented in evidence at any hearings.

B. The signed order described in this section or an order issued in response to a timely-filed request for reconsideration shall constitute the final agency action.

C. A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R655-6-17. Requests for Reconsideration.

A. Who may file.

Any aggrieved party may file a Request for Reconsideration by following the procedures of Section 63-46b-13. A Request for Reconsideration is not a prerequisite for judicial review.

B. Action on the Request.

Upon the filing of a Request for Reconsideration, the Division shall review the Request and may within 20 days do any or all of the following:

1. issue any preliminary order;

2. summarily deny the Request in whole or in part;

3. summarily grant the relief requested in whole or in part; or

4. set a time for a re-hearing.

C. If the Division does not issue an order within 20 days, the Request shall be considered to be denied.

D. Re-Hearings Limited.

If an order is made granting a rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the Presiding Officer may affirm his former decision or may abrogate it, or may change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the Presiding Officer.

R655-6-18. Judicial Review.

A. Any party aggrieved by an order of the State Engineer may obtain judicial review by following the procedures and requirements of Sections 63-46b-14 and -15 and 73-3-14 and -15.

B. The Division may grant a stay of its order or other temporary remedy during the pendency of judicial review on its own motion, or upon petition of a party pursuant to the provisions of Section 63-46b-18.

R655-6-19. Declaratory Orders.

Any interested person may file a request for agency action requesting that the State Engineer issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division pursuant to Section 63-46b-21. A request for a declaratory order shall be filed in accordance with Subsection 63-46b-3(3) which request commences an informal adjudicative proceeding. A request shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested. Persons may intervene in declaratory proceedings upon filing a timely petition to intervene in accordance with the provision of Section 63-46b-9.

The State Engineer may at his discretion decline to issue declaratory orders if the request concerns matters in issue before a pending adjudicative proceeding, or where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing an order.

R655-6-20. Emergency Orders.

Except as otherwise provided for by statute, the Division may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedure, water rights

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R657. Natural Resources, Wildlife Resources.
R657-12. Hunting and Fishing Accommodations for People With Disabilities.
R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63-46a-3, this rule provides the standards and procedures for a person with disabilities to:

(1) obtain a certificate of registration for taking wildlife from a vehicle;

(2) obtain a fishing license as authorized under Section 23-19-36(1);

(3) obtain a certificate of registration to participate in companion hunting;

(4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension; or

(6) obtain a certificate of registration to hunt with a crossbow.

R657-12-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

(d) "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to use a legal hunting weapon or fishing device.

R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.

(1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may obtain this license at any division office.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting and Fishing.

(1) A person may take protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be accompanied by the blind, upper extremity disabled or quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-8. Crossbows.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow to hunt big game, cougar, bear, turkey, waterfowl or small game during the respective archery or any weapon hunting seasons as provided in the applicable proclamations of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow; or

(ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be:

(i) at least 18 inches long; and

(ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3) The following equipment or devices may not be used:

(a) arrows with chemically treated or explosive arrowheads; or

(b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A cocked crossbow may not be carried in or on a vehicle.

KEY: wildlife, wildlife law, disabled persons
May 8, 2007 23-20-12
Notice of Continuation September 10, 2007 63-46a-3

R671. Pardons (Board of), Administration.
R671-102. Americans with Disabilities Act Complaint Procedure Rule.
R671-102-1. Purpose and Authority.

A. This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act. The Board of Pardons and Parole adopts, defines, and publishes within this rule complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 - 12134.

B. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this agency, or be subjected to discrimination by this agency.

R671-102-2. Definitions.

A. "The ADA Coordinator" or "Coordinator" means the Board of Pardons and Parole Administrative Coordinator or other Board designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of Attorney General.

C. "Agency" means the Board of Pardons and Parole.

D. "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 such an individual; a record of such an impairment; or being regarded as having such an impairment.

E. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

F. "Individual with a disability" (hereafter individual) means a person who has a disability which limits one of his/her 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 Board, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

G. "Board" means the Board of Pardons and Parole.

H. "Chairman" or "Chairman of the Board" means Chairman of the Board of Pardons and Parole.

R671-102-3. Filing of Complaints.

A. A 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 Board's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

(1) include the individual's name and address;
(2) include the nature and extent of the individual's disability;
(3) describe the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation;
(4) describe the action and accommodation desired; and
(5) be signed by the individual or by his/her legal representative.

D. Complaints filed on behalf of classes of third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R671-102-4. 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 Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the Coordinator may seek assistance from the Board'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:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
(2) facility modifications which require an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority; or
(3) reclassification or reallocation in grade; the Coordinator shall consult with the ADA State Coordinating Committee.

R671-102-5. 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 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 day period, he/she shall notify the individual in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R671-102-6. 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. The appeal shall be filed in writing with the Board's Chairman or a designee other than the Board's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization to the Chairman or designee, by the individual, to allow review of all information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the Coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Chairman or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the 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:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;
(2) facility modifications which require an expenditure of funds which is not absorbable and would require appropriation authority; or
(3) reclassification or reallocation in grade; the Chairman 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 suitable format to the individual.

G. If the Chairman or designee is unable to reach a decision within the ten working day period, he/she shall notify the individual in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

R671-102-7. Classification of Records.

A. The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA Coordinator, the Chairman 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 Coordinator, Chairman or designees shall be classified as public information.

R671-102-8. Relationship to Other Laws.

A. 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 (2002 Edition, beginning with Part 35.170); or any other Utah State or Federal law that provides equal or greater protection for the rights of individuals with disabilities.

R671-102-9. Interpreters.

The Board will provide interpreters for the hearing impaired.

KEY: disabilities
September 27, 2007 67-19-32
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. General Provisions.

Pursuant to statute, the Department of Corrections shall provide the Board of Pardons with all available information concerning the impact a crime may have had upon the victim or victim's family. Pursuant to statute, the prosecutor of the case, and upon request of the Board, any other law enforcement official responsible for offender's arrest, conviction, and sentence, shall forward to the Board a victim impact statement referring to physical, mental or economic loss suffered by the victim or victim's family.

If a victim does not wish to give testimony or is unable to do so, a victim representative may be appointed by the victim, or if the victim is a minor, by the victim's parent(s) or lawful guardian or custodian, to speak on the victim's behalf. A family member of the victim may also testify if the victim is deceased as a result of the offense or if the victim is a child.

"Victim" for purposes of this Rule means:

A. any person, of any age, against whom an offender committed a felony or class A misdemeanor offense either personally or as a party to the offense, for which a prison sentence was imposed or for which the hearing is being held;

B. in the discretion of the Board, any person, of any age, against whom a related crime or act is alleged to have been perpetrated or attempted;

C. any victim originally named in an allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty; and

D. any victim representative and family member as provided herein.

"Victim Representative" means a person who is designated by the victim or designated by the Board, who represents the victim in the best interests of the victim.

A victim or victim representative, who is appearing at a hearing where photographic equipment is being used by the media, will not be photographed without the approval of the victim and the individual presiding at the hearing.

Victims may contact the Board of Pardons, after any parole hearing, for information concerning the outcome of that hearing. Victims are advised that they may also contact the Utah State Prison Records Unit Supervisor for information on offender releases.

All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include a picture identification, appropriate dress, and no contraband. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

R671-203-2. Notification.

A. Notice of an offender's original parole hearing shall be timely sent to the victim at his most recent address of record with the board. The notice shall include:

(1) the date, time, and location of the hearing;

(2) a clear statement of the reason for the hearing, including all offenses involved;

(3) the statutes and rules applicable to the victim's participation in the hearing;

(4) the address and telephone number of an office or person the victim may contact for further explanation of the procedure regarding victim participation in the hearing;

(5) specific information about how, when, and where the victim may obtain the results of the hearing; and

(6) notification that the victim must maintain current contact information with the Board in order to receive future notifications of hearings affecting the offender's incarceration or parole.

B. If the victim is dead, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to notify the victim's immediate family of the hearing.

C. Following the notice of the original hearing, a victim may elect to receive notice of any future parole grant hearing, parole revocation hearing or re-hearing. In order to do so, the victim shall notify the Board of the desire to receive future notices, and shall thereafter maintain current contact information with the Board.

D. For victims who elect to receive future notices, the Board will mail such notice to the victim's last current address of record or most recent contact information as provided to the Board.

R671-203-3. Right to Attend; Right to Testify.

As used in this section, "hearing" means a hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present.

A victim may attend any hearing regarding the offender. A victim may testify during any hearing regarding the impact of the offense(s) upon the victim, and may present his views concerning any decision to be made regarding the offender.

The victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

R671-203-4. Victim Statements and Testimony.

A. A victim, victim representative or victim's family member (if the victim is a child, deceased or unable to attend due to physical incapacity), may testify regarding the impact of the offense(s) upon the victim, and may present his views concerning any decision to be made regarding the offender.

B. The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.

C. Oral testimony at hearings will be limited to five minutes in length per victim or representative. If a family member testifies, testimony should be limited to one family representative from the marital family (i.e. spouse or children) and/or one family representative from the nuclear/extended family (i.e. parent, sibling or grandparent). Under exceptional or extraordinary circumstances a victim may formally petition the Board to request additional testimony.

D. The victim may present testimony during the hearing outside the presence of the offender. The offender will be excused from the hearing room so that the victim can give testimony. The victim's testimony will be recorded or otherwise made available to the offender. At the conclusion of the testimony, the offender will be returned to the hearing room, and the Board will allow the offender to respond. A separate hearing will not be scheduled to allow for testimony outside the presence of the offender.

E. Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated.

F. Victims or representatives should bring a written copy of their remarks to the hearing or send a copy to the Victim Coordinator for the Board file.

G. In cases where multiple victims desire to testify, the Board may reschedule the hearing to accommodate the extra time required to hear all victims. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors required to return.

R671-203-5. Victim Impact Hearings.

A. In any case where an offender's original parole hearing is set by Board administrative determination more than three years from the offender's commitment to prison,

the victim, as defined by R671-203-1, may request that the Board conduct a victim impact hearing, in order to preserve victim impact testimony and victim statements for future use and reference by the Board.

B. The sole purpose of a victim impact hearing is to afford an opportunity for victim impact testimony and victim statements to be made in cases where an offender's original hearing is scheduled more than three years following commitment to prison, so that the victim is not denied an opportunity to participate in the offender's original hearing, simply because of the passage of time between the offender's commitment to prison and original hearing. A victim impact hearing is not a substitute for an original hearing. A victim impact hearing will not result in a review, re-scheduling or re-determination of an original hearing date.

C. Victims who request, and for whom victim impact hearings are conducted, retain all rights afforded pursuant to constitutional provision, statute or Board rule, including: the right to notice of the original hearing and any future hearings, as provided by R671-203-1 and R671-203-2; the right to attend any hearing for the offender, as provided by R671-203-1 and R671-203-3; and the right to testify and make future statements to the Board at ant hearing for the offender, as provided by R671-203-1 and R671-203-4.

D. Upon such a request from a victim, the Board shall schedule and conduct a victim impact hearing. In scheduling and conducting a victim impact hearing:

(1) All notice provisions of R671-202-1 and R671-203 et seq. shall apply.

(2) All victim appearance, testimony and statement provisions of R671-203 shall apply.

(3) The offender shall be present, pursuant to the provisions of R671-301, and shall be afforded an opportunity to respond to the victim's testimony or statement.

(4) The victim impact hearing shall be recorded, pursuant to the provisions of R671-304.

KEY: victims of crimes
September 27, 2007 **77-27-9.5**
Notice of Continuation July 25, 2007 **77-27-13**
64-13-20

R671. Pardons (Board of), Administration.
R671-206. Competency of Offenders.
R671-206-1. General.

If the hearing official presiding at a hearing has reason to believe that an offender may be mentally incompetent as defined in UCA 77-15-2, all proceedings shall be stayed pending a decision by the Board. The Board may request a mental health evaluation from the Department of Corrections or from a private mental health expert to assist in determining whether the offender is competent, or is likely to become competent while housed in the custody of the Department of Corrections.

If there is reason to believe that the inmate or parolee is incompetent, the Board may request the Department of Corrections file a petition with the district court for a competency hearing pursuant to UCA 77-15-3(b).

If the district court determines the offender is mentally competent, the Board shall proceed with scheduled hearings or other actions.

KEY: criminal competency
September 27, 2007 **77-15-3**
Notice of Continuation July 25, 2007 **77-15-5**
77-27-2
77-27-7

R671. Pardons (Board of), Administration.
R671-308. Offender Hearing Assistance.
R671-308-1. Offender Hearing Assistance.

Offenders who are deemed by the Hearing Official to be unable to effectively represent themselves at a hearing may be allowed to have any assistance the Board determines is necessary to conduct an orderly hearing. This may include a Board-appointed representative.

R671-308-2. Offender Hearing Legal Counsel.

At parole violation hearings where there are no new criminal convictions, an attorney may be retained by the State to represent parolees. An alleged parole violator may choose to have private attorney representation at the parolee's own expense.

KEY: parole, inmates
September 27, 2007 77-27-9
Notice of Continuation July 25, 2007 77-27-11
77-27-29

R671. Pardons (Board of), Administration.
R671-403. Restitution.
R671-403-1. Policy.

The Board shall consider restitution in all cases where restitution has been ordered by the court, when requested by the Department of Corrections or other criminal justice agencies, or other appropriate cases.

R671-403-2. Procedure.

The Board may originate orders of restitution on any crime(s) of commitment in accordance with UCA 77-38a-302.

The Board shall affirm court-ordered restitution in accordance with UCA 77-38a-302.

The Board may consider ordering restitution in the following instances:

A. When ordered by or as part of a disciplinary proceeding as a result of inappropriate behavior;

B. When requested by the Department of Corrections or other criminal justice agency for the costs of extradition or return to custody.

C. When requested by the Department of Corrections for the costs of programs such as unpaid fees at community correction centers, therapy or other service fees; and

D. When new information is made available that was not available to the court at the time of sentencing or prior restitution hearing.

The Board may conduct a restitution hearing to determine the amount of restitution owed by an offender. The Board will make a reasonable effort to inform both the offender and the victim(s) of the hearing and will provide copies of rules and investigative reports and other documentation. The offender and the victim(s) shall have the right to be present at the hearing and present evidence in their behalf.

KEY: restitution, government hearings, parole
September 27, 2007 **77-27-5**
Notice of Continuation February 18, 2003 **77-27-6**
77-27-5.5

R728. Public Safety, Peace Officer Standards and Training.
R728-406. Requirements For Approval and Certification of Basic Correctional, Reserve and Special Function Training Programs and Applicants.
R728-406-1. Authority.

This rule is authorized by Section 53-6-105 which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of Correctional, Reserve and Special Function Officer Training Programs and applicants.

R728-406-2. Academy Approval.

Any agency wishing to conduct a basic peace officer training program shall do so with the approval of the POST Council and by complying with the POST approved procedures.

R728-406-3. Policy and Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants shall have completed the POST application packet. Without exception, medical requirements will be completed before training begins.

1. Sponsored applicants - The sponsoring agency will complete the background investigation and insure that the requirements in 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants - POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students such as Weber State University or Salt Lake Community College will adhere to the following guidelines when providing POST with application packets.

a. It is the policy of POST that all applications will be checked to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. It is the policy of POST that applications will be provided to POST at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST (without exception medical release forms will be completed and submitted to POST before physical training begins.)

c. It is the policy of POST that a class schedule and a list of instructors will be provided to POST before training begins.

C. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

D. All instructors must be POST certified, and approved to instruct in their assigned topic(s).

E. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Form #77/1/89 (Performance Objectives Agreement) indicating they are aware of and are willing to teach the POST approved performance objectives.

F. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, will be given by POST. A minimum score of 80% is required to pass the test.

G. Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than 10% of the course and still be certifiable. Under no circumstances will a student be certified if he misses (and fails to make-up) the following classes:

1. Ethics and Professionalism
2. Laws of Arrest
3. Laws of Search and Seizure
4. Use of Force
5. First Aid (CPR only)
6. Arrest Control Techniques (practical exam)

H. Sponsoring agencies and programs must ensure that students possess a valid drivers license when involved in any training that requires the operating of a motor vehicle. Driver license checks shall be made through the State Division of Driver License.

I. Successful completion of the course and completion of all POST required paperwork is necessary before certification will be granted.

J. Upon completion of the training program, sponsoring agencies and programs will contact POST and make arrangements for the Certification Exam to be given. Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program.

K. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.

L. The Certification Exam will not be given if all the above requirements have not been met.

M. No person shall function with any authority until he has satisfactorily completed an approved training program and received POST certification.

R728-406-4. Process for Requesting Certification.

Administrators requesting certification of an employee shall submit to POST Form #61, Application for POST Certification. POST will verify the information provided, ensure annual training is up to date and check to see if the individual seeking certification is the subject of a pending investigation. POST will certify the applicant when all requirements have been met. If there is an open investigation on the subject, or a problem with annual training hours, POST will refuse to certify the applicant and make the appropriate notifications.

KEY: law enforcement officers, approval for reserve basic course, approval for special function course*, approval for correctional basic course
October 1, 2007 53-6-202
Notice of Continuation February 26, 2007

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be

by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence, facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed

to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that

no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:

Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;

b) Appeals;

c) Economic and Statistical; and

d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;

b) Taxpayer Services;

c) Motor Vehicle;

d) Auditing;

e) Property Tax;

f) Technology Management;

g) Processing; and

h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;

2. the strategic plan of the agency;

3. administrative rules and bulletins;

4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;

5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

6. stipulated or negotiated agreements that dispose of matters on appeal; and

7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;

2. adjudicative proceedings;

3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

4. internal audit processes;

5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging

information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.

(1) A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period.

(3) A petition for redetermination filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.

(1) At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

(a) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(b) A party may request that one or more commissioners sit in a proceeding for its appeal. However, the decision of whether the request is granted rests with the commission.

(c) If more than one commissioner or administrative law judge is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(2) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must pursue a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing. The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.

(1) A prehearing, scheduling, or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The prehearing, scheduling, or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(ii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iii) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means. A request by a party that documents be transmitted by e-mail shall constitute a waiver of confidentiality of any confidential information disclosed in that e-mail.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio

recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

A. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

B. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.

(1) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the Tax Commission.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(2) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the

commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63- 46b-1.

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling

inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types

that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (4)(a) or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by completing the financial statement provided by the commission.

(b) The financial statement described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial statement described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial statement, request additional information from the taxpayer as necessary to make that determination.

R861-1A-41. Date of Assessment Pursuant to Utah Code Ann. Sections 59-1-302.1 and 59-1-706.

(1) Except as provided in Subsections (2) and (3), "assessment date" means the date the tax liability is posted to the records of the commission.

(2) For purposes of a tax liability determined through an audit and for which a notice of deficiency has been mailed to the taxpayer, "assessment date" means:

(a) if a petition for redetermination has not been filed, the date:

(i) 30 days after a notice of deficiency has been mailed to the taxpayer;

(ii) 90 days after a notice of deficiency has been mailed to the taxpayer if the notice is addressed to a person outside the United States or District of Columbia; or

(iii) the taxpayer agrees with the commission, in writing, on the existence and amount of a tax liability, and consents to the assessment of the tax liability; or

(b) if a petition for redetermination has been filed, the date a tax liability resulting from a final commission decision is posted to the records of the commission.

(3) In the case of interest charged to a taxpayer, "assessment date" means the assessment date of the underlying tax liability.

(4) For purposes of Subsection (2), "deficiency" is defined as:

(a) provided in Section 59-7-516 in the case of a tax imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) provided in Section 59-10-523 in the case of a tax imposed under Title 59, Chapter 10, Individual Income Tax Act; or

(c) unless otherwise provided in statute, the amount by which the tax imposed exceeds the excess of:

(I) the sum of:

(A)(i) the amount shown as the tax by the taxpayer upon his return, if the return was made by the taxpayer and if an amount was shown on the return as the tax by the taxpayer; or

(ii) zero, if no return is filed, or the return does not show any tax; and

(B) amounts previously assessed (or collected without assessment) as a deficiency; less

(II) amounts previously abated, refunded, or otherwise repaid in respect of that tax.

(5) For purposes of Subsection (2), a notice of deficiency shall:

(a) be mailed by the commission as provided in Subsection 59-7-517(1)(a) in the case of a tax imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) be mailed by the commission as provided in Subsections 59-10-524(1) and (2) in the case of a tax imposed under Title 59, Chapter 10, Individual Income Tax Act; or

(c)(i)(A) unless otherwise required by statute, be mailed to the taxpayer at the taxpayer's last-known address if the commission determines that there is a deficiency in a tax; and

(ii) set forth the details of the deficiency and the manner of its computation.

(6) The commission may, at any time within the period prescribed for assessment, make a supplemental assessment if it is ascertained that an assessment is imperfect or incomplete in any material respect.

(7) The provisions of this rule apply to all taxes and fees collected by the commission unless otherwise provided by statute.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

September 24, 2007 **10-1-405**
Notice of Continuation March 20, 2007 **41-1a-209**
59-1-205
59-1-207
59-1-210
59-1-301
59-1-302.1
59-1-304
59-1-401
59-1-403
59-1-404
59-1-501
59-1-502.5
59-1-602
59-1-611
59-1-705
59-1-706
59-1-1004
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
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59-13-206
59-13-210
59-13-307
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004

59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63-46a-4
63-46b-1
76-8-502
76-8-503
59-2-701
63-46b-3
63-46b-4
63-46b-5
63-46b-6
63-46b-7
through
63-46b-11
63-46b-13
63-46b-14
63-46b-21
63-46a-3(2)
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R933. Transportation, Preconstruction, Right-of-Way Acquisition.
R933-5. Utah-Federal Agreement for the Control of Outdoor Advertising.
R933-5-1. Introduction.

The Utah-Federal Agreement was executed by the governor of Utah and the secretary of the United States Department of Transportation's Federal Highway Administrator on January 18, 1968. It sets out the parameters by which Utah agrees to manage and regulate outdoor advertising along the federal highway system. Though never placed in the Utah Code, the legislature has ratified the governor's execution of the agreement under Section 72-7-501 (Supp. 2001).

R933-5-2. Utah-Federal Agreement.

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM.

THIS AGREEMENT made and entered into this 18th day of January, 1968, by and between the United states of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the Administrator, and the state of Utah, acting by and through its Governor, hereinafter referred to as the State.

Witnesseth:

WHEREAS, the governor is authorized by Senate Bill No. 94, enacted by the Thirty-seventh Utah State Legislature, to enter into agreements with the Secretary of Commerce, whose functions, powers and duties in regard to highway matters have been transferred to the Secretary of Transportation by Public Law 89-760, 89th Congress, on behalf of the State of Utah to comply with Title I of the Highway Beautification Act of 1965; and

WHEREAS, Section 131(d) of Title 23, United states Code provides for agreement between the Secretary of Transportation and the several states to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary sue, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the interstate and primary systems which are zoned industrial or commercial under authority of state law or in unzoned commercial or industrial areas, which areas are also to be determined by agreement, and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the State of Utah elects to implement and carry out the provisions of Section 131 of Title 23, United states Code, and the national policy in order to remain eligible to receive the full amount of all federal-aid highway funds to be apportioned to such state on or after January1, 1968, under Section 104 of Title 23, United States Code.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. Definitions

A. The term "Act" means Section 131 of Title 23, United States Code (1965), commonly referred to as Title I of the Highway Beautification act of 1965.

B. Commercial or industrial zone means those areas which are reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinance or regulation, or enabling state legislation, including Highway Service areas lawfully zoned as Highway Service Zones, in which the primary use of the land is reserved for commercial and roadside services other than outdoor advertising to serve the traveling public.

C. Unzoned commercial or industrial area means those areas not zoned by state or local law, regulation or ordinance, which are occupied by one or more industrial or commercial activities, other than outdoor advertising signs, the lands along the highway for a distance of 600 feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the Utah Road Commission.

All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and shall be along or parallel to the edge of pavement of the highway.

D. Commercial or industrial activities, for purposes of the unzoned area definition above, mean those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

1. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to wayside fresh produce stands.
2. Transient or temporary activities.
3. Activities not visible from the main-traveled way.
4. Activities conducted in a building principally used as a residence.
5. Railroad tracks and minor sidings.

Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of six continuous months, any signs located within the former unzoned area shall become non-conforming.

E. Sign means any outdoor sign, light , display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the interstate or federal-aid primary highway.

F. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign or sign structure.

G. Center line of the highway means a line equidistant from the edges of the median separating the main-traveled way of a divided interstate or other limited-access highway, or the center line of the main-traveled way of a non-divided highway.

H. Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

I. Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

II. Scope of Agreement

This agreement shall apply to:

A. All zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the interstate and primary systems within the State of Utah in which outdoor advertising signs, displays and

devices may be visible from the main-traveled way of said system.

III. State Control

The State hereby agrees that, in all areas within the scope of this agreement, the State shall effectively control or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this agreement other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon, in accordance with the following criteria:

A. In zoned and unzoned commercial and industrial areas, the criteria set forth below shall apply to signs, displays and devices erected subsequent to the effective date of this agreement.

General

THE FOLLOWING SIGNS SHALL NOT BE PERMITTED

1. Signs which imitate or resemble any official traffic sign, signal, or device.

2. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

3. Signs which are erected or maintained in such a ;manner as to obscure, or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic.

Size of Signs

1. No sign shall exceed the following dimensions:

(a) Maximum area - 1000 square feet

(b) Maximum height--25 feet

(c) Maximum length--60 feet

2. The area shall be measured by the outer limits of the advertising space.

3. A sign structure may contain no more than two facings visible and readable from the same direction on the main traveled way on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

4. Back-to-back or V-type sign structures will be permitted with the maximum area being allowed for each facing; and considered as one structure and subject to spacing as herein below provided, but must be erected so that no more than two facings are visible to traffic in any one direction.

Spacing of Signs

1. Signs may not be located within 500 feet of any of the following which are adjacent to the highway:

(a) Public parks

(b) Public forests

(c) Playgrounds

(d) Cemeteries

2. Interstate Highways and Limited-Access Highways on the Primary System.

(a) Spacing between sign structures along each side of the highway shall be a minimum of 500 feet except that this spacing shall not apply to signs which are separated by a building or other obstruction in such a manner that only one sign located within the minimum spacing distance set forth above is visible from the highway at any one time.

(b) No sign may be located on an interstate highway or freeway within 500 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

3. Non-Limited Access Primary Highways.

The location of sign structures situated between streets, roads or highway entering into or intersecting the main traveled way shall conform to the following minimum spacing criteria to be applied separately to each side of the primary highway:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1000 feet, a minimum spacing between structures of 150 feet (double-faced, V-type and/or back-to-back) may be permitted between such intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1000 feet or more, minimum spacing between sign structures (double-faced, V-type and/or back-to-back) shall be 300 feet.

4. Explanatory Notes

(a) Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.

(b) Only roads, streets and highways which enter directly into the main-traveled way of the primary highway shall be regarded as intersecting.

(c) Official and "on premise" signs, as defined in Section 131 (c) of Title 23, United states Code, shall not be counted nor shall measurements be made from them for purposes of determining compliance with the above spacing requirements.

(d) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs.

Lighting

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

IV. Interpretation

The provisions contained herein shall constitute the acceptable standards for effective control of signs, displays, and devices within the scope of this agreement.

Nothing contained herein shall be construed to abrogate or prohibit a municipality from exercising a greater degree of control of outdoor advertising than that required or contemplated by the Act of from adopting standards which are more restrictive in controlling outdoor advertising than the provisions of this Agreement.

Standards and criteria contained in Section III shall apply to signs erected subsequent to the effective date of this Agreement. Existing signs in zoned and unzoned commercial or industrial areas will be considered to be conforming to said standards and criteria.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress, or the provisions of Chapter 51, Section 5, Laws of Utah, 1967, are amended by subsequent action of the Utah state Legislature, the parties reserve the right to re-negotiate this Agreement or to modify it to conform with any amendment.

V. Effective Date

This agreement shall become effective when signed and executed on behalf of both the State and the Untied States of America.

IN WITNESS WHEREOF, the State has caused this Agreement to be duly executed in its behalf, and the Secretary of transportation has likewise caused the same to be duly

executed in his behalf, as of the dates specified below.

KEY: outdoor advertising, interstate highways
June 4, 2002 72-7-501
Notice of Continuation October 1, 2007