R33. Administrative Services, Purchasing and General Services.
R33-1. Utah State Procurement Rules Definitions.
R33-1-1. Definitions.

A. Terms used in the procurement rules are defined in Section 63-56-105.

B. In addition:

(1) Actual Costs means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) Adequate Price Competition means when competitive sealed proposals are solicited and at least two responsible offerors independently contend for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced best and final offers meeting the requirements of the request for proposals. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines that there is not adequate competition.

(3) Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(4) Brand Name Specification means a specification calling for one or more products by manufacturers' names or catalogue numbers.

(5) Chief Procurement Officer means the procurement officer for the State of Utah.

(6) Consultant Services means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, and data processing.

(7) Cost Analysis means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred.

(8) Cost Data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(9) Cost Objective means a function, organizational subdivision, contract, or any other work unit for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, and similar items.

(10) Discussions as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussion can be conducted under competitive sealed proposals, sole source, and emergency procurements; such discussion is not permissible under competitive sealed bidding except to the extent in the first phase of multi-step bidding.

(11) Electronic means, in reference to any solicitation process, only those specified electronic forms described in the Invitation for Bids, Request for Proposals or other solicitation document.

(12) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(13) Lease means a contract for the use of equipment or real property under which title does not pass to the purchasing agency.

(14) Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

(15) Price Analysis means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

(16) Price Data means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

(17) Professional Services means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, court reporters, X-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

(18) Property means all real property, personal property, or both, owned by a purchasing agency.

(19) Providers means suppliers of services, which might be termed "personal services", to benefit clients or citizens of the enacting jurisdiction which services otherwise might be performed by its own employees. For example, an enacting jurisdiction might contract with a school to conduct a training program for the handicapped. Similarly, the state might contract with persons to provide foster homes for children. It will be necessary to ascertain on a case-by-case basis whether the services to be rendered will involve extended analysis and significant features of judgment.

(20) Qualified Products List means a list of supplies, services, or construction items described by model or catalogue numbers, which, prior to solicitation, the purchasing agency has determined will meet the applicable specification requirements.

(21) Solicitation means an Invitation for Bids, a Request for Proposals, or any other document, such as a request for quotations, issued by the purchasing agency for the purpose of soliciting offers to perform a contract.

(22) Suppliers means prospective bidders or offerors, as used in section 63-56-414 of the Utah Procurement Code.

KEY: government purchasing
February 21, 2006 63-56
Notice of Continuation November 23, 2007

R33. Administrative Services, Purchasing and General Services.
R33-2. Procurement Organization.
R33-2-101. Delegation of Authority of the Chief Procurement Officer.

The Chief Procurement Officer may delegate in writing any authority Pursuant to Section 63-56-205 as deemed appropriate to any employees of the office of the Chief Procurement Officer or of a purchasing agency, respectively. These delegations shall remain in effect unless modified or until revoked in writing.

R33-2-102. Authority to Make Small Purchases.

(1) General. The Chief Procurement Officer may delegate to the head of any using agency the authority to make a purchase expected to be less than $50,000 for supplies and services. This delegation shall be in writing and may be limited as the Chief Procurement Officer directs.

(2) Purchasing Agencies Shall Make Small Purchases Pursuant to Rules. Purchasing agencies shall exercise authority as may be delegated, and such small purchases shall be made pursuant to subpart 3-3 of part 3 of these rules.

R33-2-103. Authority of Procurement Officers.

Procurement officers may take any action of a procurement nature to advance economic well-being and efficient operation of the state or agency so long as that action is not in conflict with the Utah Procurement Code or the Utah Procurement Rules.

KEY: government purchasing
May 27, 2003 63-56
Notice of Continuation November 23, 2007

R33. Administrative Services, Purchasing and General Services.
R33-3. Source Selection and Contract Formation.
R33-3-1. Competitive Sealed Bidding; Multi-Step Sealed Bidding.

3-101 Content of the Invitation For Bids.

(1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

(2) Content. The Invitation for Bids include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;

(b) The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description;

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where the documents can be obtained.

(4) Acknowledgement of Amendments. The Invitation for Bids shall require the acknowledgement of the receipt of all amendments issued.

3-102 Bidding Time. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

3-103 Bidder Submissions.

(1) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

(2) Electronic Bids. The Invitation for Bids may state that electronic bids will be considered whenever they are received at the designated office by the time specified for bid opening.

(3) Bid Samples and Descriptive Literature.

(a) Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.

(b) Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(c) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

(d) Samples of items, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.

(4) Bid Security. Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interests of the purchasing agency. Any requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility.

(5) Bid Price. Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

3-104 Public Notice.

(1) Distribution. Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long Invitation for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. Where appropriate, the procurement officer may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) Publication. Every procurement in excess of $50,000 shall be publicized in any or all of the following:

(a) in a newspaper of general circulation;

(b) in a newspaper of local circulation in the area pertinent to the procurement;

(c) in industry media; or

(d) in a government internet website or publication designed for giving public notice.

(3) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

3-105 Bidder List; Prequalification.

(1) Purpose. Lists of qualified prospective bidders may be compiled and maintained by purchasing agencies for the purpose of soliciting competition on various types of supplies, services, and construction. Qualifications for inclusion on the lists may include legal competence to contract and capabilities for production and distribution as considerations. However, solicitations shall not be restricted to prequalified suppliers, and unless otherwise provided inclusion or exclusion on the name of a business does not determine whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(2) Public Availability. Subject to procedures established by the procurement officer, names and addresses on bidder lists shall be available for public inspection.

3-106 Pre-Bid Conferences.

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in section 3-107 and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the procurement officer, a copy shall be supplied to all those prospective bidders known to have received an Invitation for Bids and shall be available as a public record.

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

(a) make any changes in the Invitation for Bids including changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

(c) furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of information would be inequitable to other bidders.

(2) Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.

(3) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for

Bids.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit proper preparation, to the extent possible the time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

3-108 Pre-Opening Modification of Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written or electronic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.

(2) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

3-109 Late Bids, Late Withdrawals, and Late Modifications.

(1) Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for opening of bids at the place designated for opening is late.

(2) Treatment. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of personnel directly serving the procurement activity.

(3) Records. Records equivalent to those required in section 3-108 (3) shall be made and kept for each late bid, late modification, or late withdrawal.

3-110 Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening. They shall be stored in a secure place until bid opening time.

(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection (3) of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. Bids submitted through electronic means shall be received in such a manner that the requirements of this section can be readily met.

(3) Confidential Data. The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidders in writing what portions of the bids will be disclosed.

3-111 Mistakes in Bids.

(1) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in section 3-108.

(3) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (1), (4) and (6) of this section are met.

(4) Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.

(a) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The procurement officer may waive these informalities. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(C) Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(D) Mistakes Where Intended Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:

(i) a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

(ii) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(5) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

(6) Written Approval or Denial Required. The procurement officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Approval or denial may be so indicated on the bidder's written request for correction or withdrawal.

3-112 Bid Evaluation and Award.

(1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is the best interests of the purchasing agency as determined by the purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in

response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall (a) re-solicit new bids using the same or revised specifications; or (b) withdraw the requisition for supplies or services.

(2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by subpart 3-7 of these rules. Responsiveness of bids is covered by Subsection 63-56-105(24) and responsive bidder is defined in Subsection 63-56-105(25).

(3) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

(a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

(b) examination of such elements as appearance, finish, taste, or feel; or

(c) other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(4) Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of criteria include transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall:

(a) be reasonable estimates based upon information the purchasing agency has available concerning future use; and

(b) treat all bids equitably.

(5) Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the procurement officer may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting an extension shall be documented.

(6) Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

(c) if the procurement officer determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under subpart 3-4 or subpart 3-5, as appropriate.

(7) Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

3-113 Tie Bids.

(1) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.

(2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the procurement officer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:

(a) where identical low bids include the cost of delivery, award the contract to the bidder closest to the point of delivery;

(b) award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;

(c) award to the identical bidder with the earliest delivery date;

(d) award to a Utah resident bidder or for a Utah produced product where other tie bids are from out of state;

(e) if price is considered excessive or for other reason the bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market; or

(f) if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

(a) the Invitation for Bids;

(b) the supply, service, or construction item;

(c) all the bidders and the prices submitted; and

(d) procedure for resolving tie bids. A copy of each record shall be sent to the Attorney General if the tie bids are in excess of $50,000.

3-114 Multi-Step Sealed Bidding.

(1) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method will be used when the procurement officer deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable:

(a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish subsections (a) and (b) of this section prior to soliciting priced bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

3-115 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers.

3-116 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) whether price bids are to be submitted at the same time as unpriced technical offers; if they are, the price bids shall be submitted in a separate sealed envelope;

(c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(d) the criteria to be used in the evaluation of the unpriced technical offers;

(e) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction item offered. Prior to the award of the selection of the lowest responsive and responsible bidder following phase two, technical offerors shall be shown only to purchasing agency personnel having a legitimate interest in them. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (5) of this section.

(5) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(6) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer to be unacceptable, the officer shall notify the bidder. The bidders shall not be afforded an additional opportunity to supplement technical offers.

3-117 Mistakes During Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-116(5) (procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

3-118 Carrying Out Phase Two.

(1) Initiation. Upon the completion of phase one, the procurement officer shall either:

(a) open price bids submitted in phase one from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or

(b) invite each acceptable bidder to submit a price bid.

(2) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

(a) as specifically set forth in section 3-114 through section 3-120 of these rules; and

(b) no public notice need be given of this invitation to submit.

3-119 Procuring Governmental Produced Supplies or Services.

Purchasing agency requirements may be fulfilled by procuring supplies produced or services performed incident to programs such as industries of correctional or other governmental institutions. The procurement officer shall determine whether the supplies or services meet the purchasing agency's requirements and whether the price represents a fair market value for the supplies or services. If it is determined that the requirements cannot thus be met or the price is not fair and reasonable, the procurement may be made from the private sector in accordance with the Utah Procurement Code. When procurements are made from other governmental agencies, the private sector need not be solicited to compete against them.

3-120 Purchase of Items Separately from Construction Contract.

The procurement officer is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3-121 Exceptions to Competitive Sealed Bid Process.

(1) The Chief Procurement Officer, head of a purchasing agency or designee may utilize alternative procurement methods to purchase items such as the following when determined to be more practicable or advantageous to the state.

(a) Used vehicles

(b) Livestock

(2) Alternative procurement methods including informal price quotations and direct negotiations may be used by the Chief Procurement Officer, head of the purchasing agency or designee for the following:

(a) Hotel conference facilities and services

(b) Speaker honorariums

(3) Documentation of the alternative procurement method utilized shall be part of the contract file.

3-130 Reverse Auctions.

(1) Definition. In accordance with Utah Code Annotated Section 63-56-402 a "reverse auction" means a process where:

(a) contracts are awarded in a open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) Reverse auction is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated against the established criteria by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase submit their price bids through a reverse auction.

(3) Use. The reverse auction method will be used when the procurement officer deems it to the advantage of the purchasing agency.

3-131 Pre-Bid Conferences in Reverse Auctions.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers, or to explain the reverse auction process.

3-132 Procedure for Phase One of Reverse Auctions.

(1) Form. A reverse auction shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the reverse auction Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) that it is a reverse auction procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(c) the criteria to be used in the evaluation of the unpriced technical offers;

(d) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(e) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(f) the manner which the second phase reverse auction will be conducted.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, technical offers shall remain confidential and shall be available only to purchasing agency personnel and those involved in the selection process having a legitimate interest in them.

(4) Non-Disclosure of Proprietary Data. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing. If a bidder has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the procurement officer shall examine the request in the proposal to determine its validity prior to the beginning of phase two. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portion of the bid will be disclosed and that, unless the bidder withdraws the bid it will be disclosed.

(5) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (6) of this section.

(6) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(7) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer is unacceptable, the officer shall notify the bidder. After this notification the bidder shall not be afforded an additional opportunity to modify their technical offer.

3-133 Carrying Out Phase Two of Reverse Auctions.

(1) Upon the completion of phase one, the procurement officer shall invite those technically qualified bidders to participate in phase two of the reverse auction which is an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.

(2) The invitation for bids shall:

(a) establish a date and time for the beginning of phase two;

(b) establish a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependent on a variable specified in the invitation for bids.

(3) Following receipt of the first bid after the beginning of

phase two, the lowest bid price shall be posted, either manually or electronically, and updated as other bidders submit their bids.

(a) At any time before the closing date and time a bidder may submit a lower bid, provided that the price is below the then lowest bid.

(b) Bid prices may not be increased after the beginning of phase two.

3-134 Mistakes During Reverse Auctions.

(1) Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-132(5) (procedure for Phase One of Reverse Auctions, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

(2) A phase two bid may be withdrawn only in accordance with 3-111. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the procurement officer may cancel the solicitation or reopen phase two bidding to all bidders deemed technically qualified through phase one by giving notice to those bidders of the new date and time for the beginning of phase two and the new closing date and time.

R33-3-2. Competitive Sealed Proposals.

3-201 Use of Competitive Sealed Proposals.

(1) Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular procurement or type of procurement than competitive sealed bidding, after consideration of factors such as:

(a) whether there may be a need for price and service negotiation;

(b) whether there may be a need for negotiation during performance of the contract;

(c) whether the relative skills or expertise of the offerors will have to be evaluated;

(d) whether cost is secondary to the characteristics of the product or service sought, as in a work of art; and

(e) whether the conditions of the service, product or delivery conditions are unable to be sufficiently described in the Invitation for Bids.

(2) Determinations.

(a) Except as provided in Section 63-56-408 of the Utah Procurement Code, before a solicitation may be issued for competitive sealed proposals, the procurement officer shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.

(b) The procurement officer may make determinations by category of supply, service, or construction item rather than by individual procurement. Procurement of the types of supplies, services, or construction so designated may then be made by competitive sealed proposals without making the determination competitive sealed bidding is either not practicable or not advantageous. The officer who made the determination may modify or revoke it at any time and the determination should be reviewed for current applicability from time to time.

(3) Professional Services. For procurement of professional services, whenever practicable, the competitive sealed proposal process shall be used. Examples of professional services generally best procured through the RFP process are accounting and auditing, court reporters, x-ray technicians, legal, medical, nursing, education, actuarial, veterinarians, and research. The procurement officer will make the determination. Architecture and engineering professional services are to be procured in compliance with R33-5-510.

3-202 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with section 3-101 provided that it shall also include:

(a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and

(b) a statement of when and how price should be submitted.

3-203 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the procurement officer.

3-204 Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

3-204.1 Protected Records.

The following are protected records and will be redacted subject to the procedures described below. From any public disclosure of records as allowed by the Governmental Records Access and Management acte (GRAMA) Title 63, Chapter 2 of the Utah Code. The protections below apply to the various procurement records including records submitted by offerors and their subcontractors or consultants at any tier.

(a) Trade Secrets. Trade Secrets, as defined in Section 13-24-2, will be protected and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(b) Certain commercial information or nonindividual financial information. Commercial information or nonindividual financial information subject to the provisions of Section 63-2-304(2) will be a protected record and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(c) Other Protected Records under GRAMA. There will be no public disclosure of other submitted records that are subject to non-disclosure or being a protected record under a GRAMA statute provided that the requirements of R33-3-204.2 are met unless GRAMA requires such nondisclosure without any preconditions.

3-204.2 Process For Requesting Non-Disclosure. Any person (firm) who believes that a record should be protected under R33-3-204.1 shall include with their proposal or submitted document:

(a) a written indication of which provisions of the submittal(s) are claimed to be considered for business confidentiality (including trade secret or other reason for non-disclosure under GRAMA; and

(b) a concise statement of reasons supporting each claimed provision of business confidentiality.

3-204.3 Notification. The person who complies with R33-3-204.2 shall be notified by the governmental entity prior to the public release of any information for which business confidentiality has been asserted.

3.204.4 Non-Disclosure and Dispute Process. Except as provided by court order, the governmental entity to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under R33-3-204.1 but which the governmental entity or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This R33-3-204-4 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee. To the extent provided by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

3-204.5 Timing of Public Disclosure. Any allowed public disclosure of records submitted in the competitive sealed proposal process will only be made after the selection of the successful offeror(s) has been made public.

3-205 Public Notice.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under section 3-104.

3-206 Pre-Proposal Conferences.

Pre-proposal conferences may be conducted in accordance with section 3-106. Any conference should be held prior to submission of initial proposals.

3-207 Amendments to Request for Proposals.

Amendments to the Request for Proposals may be made in accordance with section 3-107 prior to submission of proposals. After submission of proposals, amendments to the Request for Proposals shall be distributed only to offerors who submitted proposals and they shall be allowed to submit new proposals or to amend those submitted. An amendment to the Request for Proposals may be issued through a request for submission of Best and Final Offers. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Request for Proposals shall be canceled and a new Request for Proposals issued.

3-208 Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn prior to the established due date in accordance with section 3-108. For the purposes of this section and section 3-209, the established due date is either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

3-209 Late Proposals, Late Withdrawals, and Late Modifications.

(1) Definition. Except for modification allowed pursuant to negotiation, any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late.

(2) Treatment. No late proposal, late modification, or late withdrawal will be considered unless received before contract award, and the late proposal would have been timely but for the action or inaction of personnel directly serving the procurement activity.

(3) Records. All documents shall be kept relating to the acceptance of any late proposal, modification or withdrawal.

3-210 Receipt and Registration of Proposals.

(1) Proposals shall be opened publicly, identifying only the names of the offerors. Proposals submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such proposals shall be securely stored until the time and date set for opening. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

3-211 Evaluation of Proposals.

(1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.

(3) Classifying Proposals. For the purpose of conducting discussions under section 3-212, proposals shall be initially classified as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

(1) "Offerors" Defined. For the purposes of this section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential contractors to offer their best proposals, by amending their original offers, if needed.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The procurement officer should establish procedures and schedules for conducting discussions. If before, or during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended in compliance with R33-3-2(3-207) to incorporate this clarification or change. Auction techniques and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(4) Best and Final Offers. The procurement officer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the procurement officer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the purchasing agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

3-213 Mistakes in Proposals.

(1) Mistakes Discovered Before the Established Due Date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in section 3-208.

(2) Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsection (3) of this section are met.

(3) Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

(a) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(b) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding.

(c) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have

been received, mistakes may be corrected and the correct offer considered only if:

(i) the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or

(ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and the correction would not be contrary to the fair and equal treatment of other offerors.

(d) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

(i) the mistake is clearly evident on the face of the proposal and the correct offer is not; or

(ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis that the proof would be contrary to the fair and equal treatment of other offerors.

(4) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

3-214 Award.

(1) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(2) One Proposal Received. If only one proposal is received in response to a Request for Proposals, the procurement officer may, as the officer deems appropriate, either make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

3-215 Publicizing Awards.

(1) After the selection of the successful offeror(s), notice of award shall be available in the purchasing agency's office and may be available on the internet.

(2) The following shall be disclosed to the public after notice of the selection of the successful offeror(s) and after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under R33-3-204;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under R33-3-204;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under R33-3-204.

(3) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers in relation to their individual scores or rankings;

(b) non-public financial statements; and

(c) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

3-216 Exceptions to Competitive Sealed Proposal Process.

(1) As authorized by Section 63-56-408(1) the Chief Procurement Officer or designee may determine that for a given request it is either not practicable or not advantageous for the state to procure a commodity or service referenced in section 3-201 above by soliciting competitive sealed proposals. When making this determination, the Chief Procurement Officer may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event of that it is so determined, the Chief Procurement Officer, head of a purchasing agency or designee may elect to utilize an alternative, more cost effective procurement method, which may include direct negotiations with a qualified vendor or contractor.

(2) Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file.

3-217 Multiple Award Contracts for Human Service Provider Services.

The Chief Procurement Officer, head of a purchasing agency or designee may elect to award multiple contracts for Human Service Provider Services through a competitive sealed proposal process by first determining the appropriate fee to be paid to providers and then contracting with all providers meeting the criteria established in the RFP. However this specialized system of contracting for human service provider services may only be used when:

(1) The agency has performed an appropriate analysis to determine appropriate rates to be paid;

(2) The agency files contain adequate documentation of the reasons the contractor was awarded the contract and the reasons for selecting a particular contractor to provide the service to each client; and

(3) The agency has a formal written complaint and appeal process, notice of which is provided to the contractors, and an internal audit function to insure that selection of the contractor from the list of awarded contractors was fair, equitable and appropriate.

R33-3-3. Small Purchases.

3-301 Authority to Make Small Purchases.

(1) Amount. The Office of the Chief Procurement Officer or purchasing agency may use these procedures if the procurement is estimated to be less than $50,000 for supplies, services or construction. If these procedures are not used, the other methods of source selection provided in Section 63-56-410 of the Utah Procurement Code and these rules shall apply.

(2) Existing Statewide Contracts. Supplies, services, or construction items available under statewide contracts or similar agreements shall be procured under these agreements in accordance with the provisions or requirements for use and not under this subpart unless otherwise authorized by the Chief Procurement Officer.

(3) Available from One Business Only. If the supply, service, or construction item is available only from one business, the sole source procurement method set forth in subpart 3-4 of these rules shall be used.

(4) Division of Requirements. Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 63-56-410 of the Utah Procurement Code.

3-302 Small Purchases of Supplies, Services or Construction Between $5,000 and $50,000.

(1) Procedure. Insofar as it is practical for small purchases

of supplies, services or construction between $5,000 and $50,000, no less than two businesses shall be solicited to submit electronic, telephone or written quotations. Award shall be made to the business offering the lowest acceptable quotation.

(2) Records. The names of the businesses offering quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

3-303 Small Purchases of $5,000 or Less.

The Chief Procurement Officer shall delegate to state agencies the ability to make purchases up to $5,000 without involvement of the Division of Purchasing and General Services. For purchases up to $1,000, the agency may select the best source without seeking competitive quotes. For purchases over $1,000 and up to $5,000, agencies shall obtain price competition, and shall purchase the item from the vendor offering the lowest quote. Unless otherwise delegated requests for all purchases over $5,000, and sole source purchases exceeding $1,000 shall be submitted to the Division of Purchasing and General Services.

3-304 Small Purchases of Services of Professionals, Providers, and Consultants.

If it is expected that the services of professionals, providers, and consultants can be procured for less than $50,000, the procedures specified in this subpart may be used.

R33-3-4. Sole Source Procurement.

3-401 Conditions For Use of Sole Source Procurement.

Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

Examples of circumstances which could necessitate sole source procurement are:

(1) where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;

(2) where a sole supplier's item is needed for trial use or testing;

(3) procurement of items for resale;

(4) procurement of public utility services.

The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer. Each request shall be submitted in writing by the using agency. The officer may specify the application of the determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

3-402 Negotiation in Sole Source Procurement.

The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

3-403 Unsolicited Offers.

(1) Definition. An unsolicited offer is any offer other than one submitted in response to a solicitation.

(2) Processing of Unsolicited Offers. If a purchasing agency that receives an unsolicited offer is not authorized to enter into a contract for the supplies or services offered, the head of the agency shall forward the offer to the procurement officer who has authority with respect to evaluation, acceptance, and rejection of the unsolicited offers.

(3) Conditions for Consideration. To be considered for evaluation an unsolicited offer:

(a) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the purchasing agency; and

(b) may be subject to testing under terms and conditions specified by the agency.

R33-3-5. Emergency Procurements.

3-501 Definition of Emergency Conditions.

An emergency condition is a situation which creates a threat to public health, welfare, or safety as may arise by reason of floods, epidemics, riots, equipment failures, or other reason as may be determined by the Chief Procurement Officer or designee. The existence of this condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods.

3-502 Scope of Emergency Procurements.

Emergency procurement shall be limited to only those supplies, services, or construction items necessary to meet the emergency.

3-503 Authority to Make Emergency Procurements.

The Chief Procurement Officer may delegate in writing to any purchasing agency authority to make emergency procurements of up to an amount set forth in the delegation.

3-504 Source Selection Methods.

(1) General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, competition that is practicable shall be obtained.

(2) After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

3-505 Determination of Emergency Procurement.

The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular supplier. The determination shall be sent promptly to the Chief Procurement Officer.

R33-3-6. Responsibility.

3-601 Standards of Responsibility.

(1) Standards. Among factors to be considered in determining whether the standard of responsibility has been met are whether a prospective contractor has:

(a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) a satisfactory record of integrity;

(c) qualified legally to contract with the purchasing agency; and

(d) unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility.

Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.

(2) Information Pertaining To Responsibility. A prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

3-602 Ability to Meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities,

expertise, and personnel by submitting upon request:

(1) evidence that the contractor possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

3-603 Written Determination of Nonresponsibility Required.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. The determination shall be made part of the procurement file.

R33-3-7. Types of Contracts.

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the supply, service, or construction item being procured;

(b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

(c) the administrative costs to both parties;

(d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;

(e) the effect of the choice of the type of contract on the amount of competition to be expected;

(f) the stability of material or commodity market prices or wage levels;

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since this action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines in writing that this use is in the purchasing agency's best interest.

3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract with Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(i) changes in the contractor's labor contract rates;

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and

(iii) when a general price change alters the base price.

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of the price increase shall be given by the contractor in the manner and within the time specified in the contract.

3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with part 7 of these rules and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This contract type is appropriate when the uncertainties involved in contract performance are of a magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

(2) Determination Prior to Use. A cost-reimbursement contract may be used only when the procurement officer determines in writing that:

(a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

(b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(c) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(3) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time

of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

(1) General. Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula in which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

(2) Fixed-Price Cost Incentive Contract.

(a) Description. In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit, a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with part 7 of these rules and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

(b) Objective. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

(4) Determinations Required. Prior to entering into any cost incentive contract, the procurement officer shall make the written determination required by subsections 3-703(2)(b) and (c) of these rules. In addition, prior to entering any cost-plus contract with cost incentive fee, the procurement officer shall include in the written determination the determination required by subsection 3-703(2)(a) of these rules.

3-705 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

3-706 Time and Materials Contracts; Labor Hour Contracts.

(1) Time and Materials Contracts. Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the procurement officer determines in writing that:

(a) personnel have been assigned to closely monitor the performance of the work; and

(b) no other type of contract will suitably serve the purchasing agency's purpose.

(2) Labor Hour Contracts. A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the procurement officer shall make the same determinations before it is used.

3-707 Definite Quantity and Indefinite Quantity Contracts.

(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the procurement officer determines in writing that it is not practical to award another contract at the time of the extension.

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(2) Multiple Award. A multiple award is an award of an

indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the purchasing agency shall reserve the right to take bids separately if the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.

(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

3-709 Leases.

(1) Use. A lease may be entered into provided:

(a) it is in the best interest of the purchasing agency;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.

(3) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the procurement officer. Before exercising this option, the procurement officer shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

3-710 Multi-Year Contracts; Installment Payments.

(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds.

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No agreement shall be used unless provision for installment payments is included in the solicitation document.

3-711 Contract Option.

(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had a provision included in the solicitation. When a contract is awarded by competitive sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.

(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the procurement officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.

R33-3-8. Cost or Pricing Data and Analysis; Audits.

3-801 Scope.

This subpart sets forth the pricing policies which are applicable to contracts of any type and any included price adjustments when cost or pricing data are required to be submitted.

3-802 Requirements for Cost or Pricing Data.

(1) Submission of Cost or Pricing Data - Required. Cost or pricing data shall be required in support of a proposal leading to:

(a) the pricing of any contract expected to exceed $100,000 to be awarded by competitive sealed proposals or sole source procurement; or

(b) the pricing of any adjustment to any contract, including a contract, awarded by competitive sealed bidding, whether or not cost pricing data was required in connection with the initial pricing of the contract, as requested by the procurement officer. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

(2) Submission of Cost or Pricing Data - Permissive. After making determination that circumstances warrant action, the procurement officer may require the offeror or contractor to submit cost or pricing data in any other situation except where the contract award is made pursuant to competitive sealed bidding. Generally, cost or pricing data should not be required where the contract or modification is less than $2,000. Moreover, when less than complete cost analysis will provide a reasonable pricing result on awards or for change orders without the submission of complete cost or pricing data, the procurement officer shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

(3) Exceptions. Cost or pricing data need not be submitted and certified:

(a) where the contract price is based on:

(i) adequate price competition;

(ii) established catalog prices or market prices, if trade discounts are reflected in the prices; or

(iii) prices set by law or rule; or

(b) when the procurement officer determines in writing that the requirements for submitting cost or pricing data may be waived and the reasons for the waiver are stated in the determination. A copy of the determination shall be kept in the contract file and made available to the public upon request. If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

If, despite the existence of an established catalog price or market price, the procurement officer considers that a price appears unreasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by limited data pertaining to the differences in the item or services, requests should be so limited.

3-803 Submission of Cost or Pricing Data and Certification.

Cost or pricing data shall be submitted to the procurement officer at the time and in the manner prescribed in these rules or as otherwise from time to time prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, the data shall either be actually submitted or specifically identified in writing. When cost or pricing data is required, the data is to be submitted prior to beginning price negotiation and the offeror or contractor is required to keep the submission current throughout the negotiations. The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in section 3-804 of this subpart. A refusal by the offeror to supply the required data shall be referred to the procurement officer whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the procurement officer who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment.

3-804 Certificate of Current Cost or Pricing Data.

(1) Form of Certificate. When cost or pricing data must be certified, the certificate set forth below shall be included in the contract file along with any award documentation required under these rules. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

"CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in the Utah Procurement Rules submitted, either actually or by specific identification in writing, to the procurement officer in support of . . ., are accurate, complete, and current as of date, month and year. . . The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the purchasing agency which are part of the proposal.

Firm

Name

Title

Date of Execution . . . (This date should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.)"

(End of Certificate)

(2) Limitation of Representation. Because the certificate pertains to cost or pricing data, it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the offeror's or contractor's judgment is based. A certificate of current cost or pricing data is not a substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Inclusion of Notice and Contract Clause. Whenever it is anticipated that a certificate of current cost or pricing data may be required, a clause giving notice of this requirement shall be included in the solicitation. If a certificate is required, the contract shall include a clause giving the purchasing agency a contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete, and current data.

(4) Exercise of Option. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

3-805 Defective Cost or Pricing Data.

(1) Overstated Cost or Pricing Data. If certified cost or pricing data is subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the purchasing agency shall be entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in this amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) Understated Cost or Pricing Data. In determining the amount of an adjustment, the contractor shall be entitled to an adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the purchasing agency's claim for over stated cost or pricing data arising out of the same pricing action.

(3) Dispute as to Amount. If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with subsections 3-805(1) and 3-805(2) of this subpart.

3-806 Price Analysis Techniques.

Price analysis is used to determine if a price is reasonable and acceptable. It involves a comparison of the prices for the same or similar items or services. Examples of price analysis criteria include:

(1) price submissions of other prospective bidders or offerors;

(2) prior price quotations and contract prices charged by any bidder, offeror, or contractor;

(3) prices published in catalogs or price lists; and

(4) prices available on the open market.

In making an analysis, consideration must be given to any differing delivery factors and contractual provisions, terms and conditions.

3-807 Cost Analysis Techniques.

(1) General. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

(a) specific elements of costs;

(b) the necessity for certain costs;

(c) the reasonableness of amounts estimated for the necessary costs;

(d) the reasonableness of allowances for contingencies;

(e) the basis used for allocation of indirect costs;

(f) the appropriateness of allocations of particular indirect costs to the proposed contract; and

(g) the reasonableness of the total cost or price.

(2) Evaluations. Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent price and cost estimates. They shall also include consideration of whether the costs are reasonable and allocable under these rules.

3-808 Audit.

(1) The procurement officer may, at reasonable times and places, audit or cause to be audited, the books and records of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to:

(a) the cost or pricing data submitted;

(b) a contract, including subcontracts, other than a firm fixed-price contract, awarded pursuant to these rules and the Utah Procurement Code.

(2) An audit performed by an auditor selected or approved by the procurement officer shall be submitted containing at least the following information:

(a) for cost and pricing data audits:

(i) a description of the original proposal and all submissions of cost or pricing data;

(ii) an explanation of the basis and the method used in preparing the proposal;

(iii) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant affect on the proposed cost or price;

(iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its affect on the proposal;

(v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and

(vi) a statement identifying any information obtained from other sources;

(b) the number of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

(c) the use of federal assistance funds; or

(d) the fluctuation of market prices affecting the contract.

The scope of the audit may be limited by the procurement officer.

(3) For contract audits, the scope of the report will depend on the scope of the audit ordered. However, the report should contain specific reference to the terms of the contract to which the audited data relates and a statement of the degree to which the auditor believes the audited data evidence compliance with those terms.

3-809 Retention of Books and Records.

(1) Relating to Cost and Pricing Data. Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract.

(2) Relating to Other than Firm Fixed-Price Contracts. Books and records that relate to a contract in excess of $25,000, including subcontracts, other than a firm fixed-price contract, shall be maintained:

(a) by a contractor, for three years from the date of final payment under the contract; and

(b) by a subcontractor, for three years from the date of final payment under the subcontract.

R33-3-9. Plant or Site Inspection; Inspection of Supplies or Services.

3-901 Inspection of Plant or Site.

Circumstances under which the purchasing agency may perform inspections include inspections of the contractor's plant or site in order to determine:

(1) whether the standards set forth in section 3-601 have been met or are capable of being met; and

(2) if the contract is being performed in accordance with its terms.

3-902 Access to Plant or Place of Business.

The purchasing agency may enter a contractor's or subcontractor's plant or place of business to:

(1) inspect supplies or services for acceptance by the purchasing agency pursuant to the terms of a contract;

(2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 63-56-415 subsection (5) of the Utah Procurement Code; and

(3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to Section 63-56-804 of the Utah Procurement Code.

3-903 Inspection of Supplies and Services.

(1) Provisions for Inspection. Contracts may provide that the purchasing agency may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements or, after award, to contract requirements, and are acceptable. These inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

(2) Trial Use and Testing. The procurement officer is authorized to establish operational procedures governing the testing and trial use of various equipment, materials, and supplies by any using agency, and the relevance and use of resulting information to specifications and procurements.

3-904 Conduct of Inspections.

(1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

(3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

3-905 Inspection of Construction Projects.

On-site inspection of construction shall be performed in accordance with the terms of the contract.

KEY: government purchasing
February 21, 2006 63-56
Notice of Continuation November 23, 2007

R33. Administrative Services, Purchasing and General Services.
R33-4. Specifications.
R33-4-1. General Provisions.

4-101 General Purpose and Policies.

(1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

(2) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of the criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

(3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

4-102 Availability of Documents.

Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

4-103 Emergency Authority.

In the event of an emergency, as determined by the procurement officer, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these rules.

4-104 Procedures for the Development of Specifications.

(1) Provisions of General Application.

(a) Application of Section. This section applies to all persons who may prepare a specification.

(b) Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.

(c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with subsection (2) (a) of this section or a qualified products list has been developed in accordance with subsection (2) (d) of this section for a particular supply, service, or construction item, or need, it shall be used unless the procurement officer makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.

(e) The procurement officer should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

(i) the state of the art;

(ii) the characteristics of the available supplies, services, or construction items; or

(iii) needs of the using agency.

(f) The procurement officer may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the procurement officer.

(2) Special Additional Procedures.

(a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.

(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the procurement officer.

(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the procurement officer.

(b) Brand Name or Equal Specification.

(i) Brand name or equal specifications may be used when the procurement officer determines that a specification is in the purchasing agency's best interest.

(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.

(iii) Required Characteristics. Unless the procurement officer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.

(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) Use. Since use of a brand name specification is restrictive, a specification may be used when the procurement officer or designee makes a written determination. The determination may be in any form deemed acceptable to the chief procurement officer, as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.

(ii) Competition. The procurement officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63-56-410 of the Utah Procurement Code.

(d) Qualified Products List.

(i) Use. A qualified products list may be developed with the approval of the Chief Procurement Officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency

requirements.

(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

KEY: government purchasing
1988 63-56
Notice of Continuation November 23, 2007

R33. Administrative Services, Purchasing and General Services.
R33-5. Construction and Architect-Engineer Selection.
R33-5-101. Purpose and Authority.

As required by Sections 63-56-501, 63-56-504 (2), 63-56-506 and 63-56-601 (1), this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.

(2) establishing appropriate bid, performance, and payment bond requirements including criteria allowing for waiver of these requirements.

(3) governing appropriate contract provisions.

R33-5-102. Application.

The provisions of this chapter shall apply to all procurements of construction which are estimated to be greater than $50,000. Procurement of construction expected to be less than $50,000 shall be made in accordance with R33-3-3 (Small Purchases) except bid, performance and payment bonds shall be required unless waived in accordance with R33-5-355 (Waiver of Bonding Requirements on Small Projects).

R33-5-201. Methods of Construction Contract Management.

(1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. It is intended that the Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Procurement Officer should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, a careful assessment must be made by the Procurement Officer of requirements the project must satisfy and those other characteristics that would be desirable. Some of the factors to consider are:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;

(h) the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered.

(5) General Descriptions.

(a) Use of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project. However, the Procurement Officer should endeavor to ensure that these terms are described adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties.

(b) Single Prime Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the state to timely complete an entire construction project in accordance with drawings and specifications provided by the state. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Multiple Prime Contractors. Under the multiple prime contractor method, the State or the State's agent contracts directly with a number of specialty contractors to complete portions of the project in accordance with the State's drawings and specifications. The State or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

(d) Design-Build. In a design-build project, a business contracts directly with the State to meet the State's requirements as described in a set of performance specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) Construction Manager. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

(f) Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.

(g) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design

of the entire structure has been completed. This method is also known as fast track construction.

R33-5-220. Selection Documentation.

The Procurement Officer shall include in the contract file a written statement, describing the construction contracting method chosen and the facts and conclusions which led to the selection of that method. The statement shall demonstrate that the State's requirements and resources, and the various groups of potential contractors were appropriately considered in making the selection.

R33-5-230. Single Prime Contractor: Use with Sequential Design and Construction.

When a single prime contractor is used with the sequential design and construction method, comprehensive plans and specifications that are precise enough shall be prepared to allow prospective prime (general) contractors to submit a competitive sealed bid. The prime contractor awarded the contract shall be responsible for the coordination of the specialty subcontractors and for the timely completion of the project at the price specified in the contract. The architect-engineer, the State project manager, and, if used, the construction manager shall monitor the progress of the project and otherwise represent the State's interest as required by contract.

R33-5-231. Single Prime Contractor: Use with Phased Design and Construction.

A single prime contractor may be used with the phased design and construction method. Under this approach, the State will let contracts for early construction phases to specialty contractors and when the plans and specifications are sufficiently complete to allow bids to be made will let the major project contract to a prime contractor. If the State finds it administratively and economically advantageous, the State may transfer or assign to the prime contractor the administration of the specialty contracts it let earlier.

R33-5-232. Single Prime Contractor: Contractual Provisions.

The rights, duties, and responsibilities of the State representatives, the architect-engineer, prime contractor(s), and, if applicable, the construction manager and any specialty contractors awarded projects with the State shall be carefully detailed in contracts. If phased design and construction is used, administration of ongoing specialty contracts let before the prime contract will have to be transferred or assigned to the prime contractor. The terms of this assignment or transfer (including the duties of the State to ensure that the specialty contractors are at a certain point of completion at the time of assignment), what liability to the specialty contractors remains with the State after assignment, if any, and what duties and responsibilities the prime contractor has with respect to the assigned specialty contractors shall all be set forth in the specialty contracts and the contract with the prime contractor.

R33-5-240. Multiple Prime Contractors: Use with Sequential Design and Construction, and with Phased Design and Construction.

(1) Multiple prime contractors may be used with sequential design and construction by splitting the plans and specifications into packages pertinent to recognized trade specialties. The State may undertake to manage and coordinate the project's work or contracts with a construction manager. The contracts may provide that responsibility for successful completion of the entire project rests with the State, the State's agent, or one of the multiple prime contractors. The contracts shall specify where this responsibility shall rest.

(2) Multiple prime contractors may be used with phased design and construction only when the architect-engineer's work is closely coordinated with the specialty contractors' work. Under this method, the specialty contractors shall contract directly with the State or with its construction manager.

R33-5-241. Multiple Prime Contractors: Contractual Provisions.

Whenever multiple prime contractors are used, the contract between the State and each prime contractor shall:

(1) state the scope of each contractor's responsibility.

(2) identify when the portions of its work are to be complete.

(3) provide for a system of timely reports on progress of the contractor's work and problems encountered.

(4) specify that each contractor is liable for damages caused other contractors and the State whether because of delay or otherwise.

(5) clearly delineate in all the parties' contracts the duties and authority of the State representative, the architect-engineer and, if one is employed, the construction manager with respect to the specialty contractors.

These contract clauses may not relieve the State of liability if it fails to properly coordinate and manage the project.

R33-5-250. Design-Build or Turnkey: Use.

The use of design-build or turnkey method is not authorized under R33-5.

R33-5-251. Design-Build or Turnkey: Contractual Provisions.

The contract documents shall:

(1) delineate clearly the State's rights to inspect plans and specifications, and the construction work in progress.

(2) indicate precisely what constitutes completion of the project by the contractor.

R33-5-260. Construction Manager: Use.

(1) The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

(2) When entering into any subcontract that was not specifically included in the construction manager's cost proposal submitted at the time the contract manager was selected, the construction manager shall procure that subcontractor by using one of the source selection methods authorized by these rules in the same manner as if the subcontract work was procured directly by the state.

R33-5-262. Construction Manager: Contractual Provisions.

The construction managers contract shall clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract shall also define the liability of the State and the construction manager for failure to properly coordinate specialty contractors' work.

R33-5-270. Sequential Design and Construction: Use.

When the state selects the sequential design and construction method, it shall gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. When this team uses a construction manager he may, in addition to reviewing the drawings and specifications, assist in separating them into packets when multiple prime contractors are used. Except for redesign necessitated by changes in State requirements or problems encountered during construction, design is complete at the time construction has begun.

R33-5-280. Phased Design and Construction: Use.

When the phased design and construction method is used the architect-engineer, and construction manager, (if one is used) shall resolve major design decisions, and shall prepare the detail design work in the sequence necessary to construct the project. Thus construction can begin before design is complete for the entire project. Construction shall only begin after the State's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. The construction manager may also assist in packaging the various specialty contracts and to managing the work under those contracts.

R33-5-281. Phased Design and Construction: Contractual Provisions.

Contracts shall clearly establish:

(1) architect-engineer's obligation to design the project in a manner that allows for phased construction to allow phasing of project design.

(2) specialty contractors scope of work and duties to other contractors and the State.

(3) the management rights of the State and its construction manager when used.

R33-5-311. Bid Security: General.

Invitations for Bids on State construction contracts estimated to exceed $50,000 shall require the submission of bid security in an amount equal to at least 5% of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness) except as provided by Section R33-5-313 (Nonsubstantial Failure to Comply).

R33-5-312. Bid Security: Acceptable Bid Security.

Acceptable bid security shall be limited to:

(a) a bid bond in a form satisfactory to the State underwritten by a company licensed to issue bid bonds in this State;

(b) a cashiers, certified, or official check drawn by a federally insured financial institution; or

(c) cash.

R33-5-313. Bid Security: Nonsubstantial Failure to Comply.

If a bid does not comply with the security requirements of this Rule, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Chief Procurement Officer, the head of a Purchasing Agency, or the designee of such officer to be nonsubstantial where:

(a) only one bid is received, and there is not sufficient time to rebid the contract;

(b) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section R33-3-111 (Mistakes in Bids), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

R33-5-321. Performance Bonds: General.

A performance bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-331. Payment Bonds: General.

A payment bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-341. Bond Forms.

(a) Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and must be on the exact bond forms most recently adopted by the Board and on file with the chief procurement officer, except bid bonds for projects under $1,000,000 as provided by subparagraph (c).

(b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A cosurety may be utilized to satisfy this requirement.

(c) For projects estimated to cost less than $1,000,000 the State may accept bid bonds on forms provided by appropriately licensed sureties. For projects estimated to exceed $1,000,000 the bid bond shall be on the exact bid bond forms adopted by the board as required by R33-5-341(a).

R33-5-350. Waiver of Bonding Requirements on Any Project.

The chief procurement officer, or head of the purchasing agency, may waive the bonding requirement if he finds, in writing, that bonds cannot reasonably be obtained for the work involved. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-355. Waiver of Bonding Requirements on Small Projects.

The Chief Procurement Officer, or designated procurement official, may elect not to require a Performance or Payment Bond as required under Section 63-56-504 Utah Code Annotated, 1953 as amended, if the estimated total procurement does not exceed $50,000. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised

that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-401. Construction Contract Clauses: Introduction.

The contract clauses presented in this rule are promulgated for use in construction contracts in accordance with Section 63-56-601 (Contract Clauses) of the Utah Procurement Code. Alternative clauses are provided in one instance to permit accommodation of differing contract situations.

R33-5-402. Mandatory Construction Contract Clauses.

The following construction contract clauses shall be included in all construction contracts: R33-5-420 Changes Clause; R33-5-440 Suspension of Work Clause; R33-5-460 Price Adjustment Clause; R33-5-470 Claims Based on a Procurement Officer's Actions or Omissions Clause; R33-5-480 Default Delay - Time Extension Clause; R33-5-495 Termination for Convenience Clause; R33-5-497 Remedies Clause.

R33-5-403. Optional Construction Contract Clauses.

The following construction contract clauses may optionally be used in appropriate contracting situations: R33-5-430 Variations in Estimated Quantities Clause; R33-5-450 Differing Site Conditions Clause; R33-5-490 Liquidated Damages Clause.

R33-5-410. Construction Contract Clauses: Revisions to Contract Clauses.

The clauses set forth in this rule may be varied for use in a particular contract when, pursuant to the provisions of Section 63-56-601 (Contract Clauses) of the Utah Procurement Code, the Chief Procurement Officer or the head of a Purchasing Agency makes a written determination describing the circumstances justifying the variation or variations.

Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"Clause No. ....., entitled ....., is not a part of the general terms and conditions of this contract, and has been replaced by Special Clause No. ....., entitled ..... Your attention is specifically directed to this clause."

R33-5-420. Construction Contract Clauses: Changes Clause.

"CHANGES

(1) Change Order. The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

(a) changes in the work within the scope of the contract; and

(b) changes in the time for performance of the contract that do not alter the scope of the contract.

(2) Adjustment of Price or Time for Performance. If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Written Certification. The contractor shall not perform any change order which increases the contract amount unless it bears, or the contractor has separately received, a written certification, signed by the fiscal officer of the entity responsible for funding the project or the contract or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget that funds are available therefor; and, if acting in good faith, the contractor may rely upon the validity of such certification.

(4) Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

(5) Claim Barred after Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

(6) Claims Not Barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim arising under the contract, if pursued in accordance with the clause entitled 'Claims Based on a Procurement Officer's Actions or Omissions Clause' or for breach of contract."

R33-5-430. Construction Contract Clauses: Variations in Estimated Quantities Clause.

The following clause shall be inserted only in those construction contracts which contain estimated quantity items:

"VARIATIONS IN ESTIMATED QUANTITIES

(1) Variations Requiring Adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 15% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justify.

(2) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-440. Construction Contract Clauses: Suspension of Work Clause.

"SUSPENSION OF WORK

(1) Suspension for Convenience. The Procurement Officer may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

(2) Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this contract, or by the failure of the Procurement Officer to act within the time specified in this contract (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or

negligence of the contractor; or

(b) for which an adjustment is provided for or excluded under any other provision of this contract.

(3) Time Restriction on Claim. No claim under this clause shall be allowed:

(a) for any costs incurred more than 20 days before the contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(b) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(4) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-450. Construction Contract Clauses: Differing Site Conditions Clause.

Set forth below are alternative differing site conditions clauses to be used as appropriate.

(ALTERNATIVE A)

"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

(1) Notice. The contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer of:

(a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Adjustments of Price or Time for Performance. After receipt of such notice, the Procurement Officer shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

(3) Timeliness of Claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefor may be extended by the Procurement Officer in writing.

(4) No Claim After Final Payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

(5) Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids."

(END OF ALTERNATIVE A)

(ALTERNATIVE B)

"SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding."

(END OF ALTERNATIVE B)

R33-5-460. Construction Contract Clauses: Price Adjustment Clause.

"PRICE ADJUSTMENT

(1) Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or

(e) in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of the rules promulgated under Section 63-56-415 (Cost Principles) and subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code.

(2) Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 63-56-415 (Cost Principles) of the Utah Procurement Code."

R33-5-470. Construction Contract Clauses: Claims Based on a Procurement Officer's Actions or Omissions Clause.

"CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(1) Notice of Claim. If any action or omission on the part of a Procurement Officer or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) the contractor shall have given written notice to the Procurement Officer or designee of such officer:

(i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer;

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time,

detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) Limitation of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any State officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-480. Construction Contract Clauses: Default-Delay-Time Extensions Clause.

"TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY DAMAGES FOR DELAY-TIME EXTENSIONS

(1) Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within (14) days after receipt of written notice from the Procurement Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Procurement Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the State resulting from the contractor's refusal or failure to complete the work within the specified time.

(2) Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

(3) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(4) Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

(a) the delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Procurement Officer proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(b) the contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

(5) Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.

(6) Additional Rights and Remedies. The rights and remedies of the (State) provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

R33-5-490. Construction Contract Clauses: Liquidated Damages Clause.

The following clause may be used in construction contracts when it is difficult to determine with reasonable accuracy damage to the State due to delays caused by late contractor performance or nonperformance.

"LIQUIDATED DAMAGES

When the contractor fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension thereof, the contractor shall pay to the State ($) per calendar day of delay pursuant to the clause of this contract entitled, 'Termination for Default for Nonperformance or Delay-Damages for Delay-Time Extensions.'"

R33-5-495. Construction Contract Clauses: Termination for Convenience Clause.

"TERMINATION FOR CONVENIENCE

(1) Termination. The Procurement Officer may, when the interests of this State so require, terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective,

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor shall still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

(3) Right to Construction and Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer:

(a) any completed construction; and

(b) such partially completed construction, supplies,

materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of Uniform Commercial Code Section 2-706. (U.C.C. SS2-706 is quoted in the Editorial Note at the end of this Section.) This in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation.

(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 63-56-415 (Cost or Pricing Data) of the Utah Procurement Code, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 63-56-601 (Cost or Pricing Data) of the Utah Procurement Code and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this paragraph:

(i) with respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(A) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (2) of this clause. These costs shall not include costs paid in accordance with subparagraph (c)(i)(A) of this paragraph;

(C) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

The total sum to be paid the contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under paragraph (3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under subparagraphs (b) and (c) of this paragraph shall be in accordance with R33-3-8."

R33-5-497. Construction Contract Clauses: Remedies Clause.

"REMEDIES

Any dispute arising under or out of this contract is subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code."

R33-5-510. Application.

The provisions of this section apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-3-4 and Section R33-3-5.

R33-5-520. Policy.

It is the policy of this State to:

(a) give public notice of all requirements for architect-engineer services except as noted in Sections R33-5-510 and R33-5-530 and

(b) negotiate contracts for these services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

R33-5-525. Annual Statement of Qualifications and Performance Data.

The Chief Procurement Officer, the head of a Purchasing Agency, or a designee of either officer shall request firms engaged in providing architect-engineer services to annually submit a statement of qualifications and performance data which should include the following:

(a) the name of the firm and the location of all of its offices, specifically indicating the principal place of business,

(b) the age of the firm and its average number of employees over the past five years,

(c) the education, training, and qualifications of members of the firm and key employees,

(d) the experience of the firm reflecting technical capabilities and project experience,

(e) the names of five clients who may be contacted, including at least two for whom services were rendered in the last year,

(f) any other pertinent information regarding qualifications and performance data requested by the Procurement Officer.

A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend statements of qualifications and performance data at any time by filing a new statement.

R33-5-527. Billing Rate Survey.

The Consulting Engineers Council of Utah and the local chapter of the American Institute of Architects will provide the results of an annual survey on billing rates within their respective disciplines to the chief procurement officer prior to April 1 each year. This information will then be made available to all public procurement units.

R33-5-530. Small Purchases of Architect-Engineer Services.

When the procurement of Architect-Engineer Services is estimated to be less than $50,000, the procurement officer may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to exceed $50,000 then the selection method prescribed by the following sections apply.

R33-5-540. Architect-Engineer Selection Committee.

The Chief Procurement Officer, or designee, shall designate members of the Architect-Engineer Selection Committee. The selection committee must consist of at least three members, where possible at least one of which is well qualified in the professions of architecture or engineering, as appropriate.

The Chief Procurement Officer, or designee, shall designate one member of the committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm in accordance with Section 63-56-704 of the Utah Procurement Code.

R33-5-550. Public Notice.

Public notice for architect-engineer services shall be given by the Procurement Officer as provided in R33-3-104. The notice shall be published sufficiently in advance of when responses must be received in order that firms have an adequate opportunity to respond to the solicitation, but not less than the time required by R33-3-102. The notice shall contain a brief statement of the services required which adequately describes the project, the closing date for submissions and how specific information on the project may be obtained.

R33-5-560. Request for Statements of Interest.

A request for statements of interest (SOI) shall be prepared which describes the state's requirements and sets forth the evaluation criteria. It shall be distributed upon request and payment of a fee.

The request for statements of interest (SOI) shall include notice of any conference to be held and the criteria to be used in evaluating the statements of interest, qualifications and performance data and selecting firms, including:

(a) competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services.

(b) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously, and

(c) past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to factors such as control of costs, quality of work, and an ability to meet deadlines.

R33-5-570. Definition of Scope of Work.

Prior to initiating a request for SOI for architect-engineer services the using agency shall define the scope of the services. The scope definition shall be sufficient to define the work expected, as detailed as possible and the scope definition shall be the basis for the negotiation process. However the scope may be modified if necessary during final negotiations.

R33-5-580. Evaluation of Statements of Interest, Qualifications and Performance Data.

The selection committee shall evaluate:

(a) annual statement of qualifications and performance data submitted under Section R33-5-525;

(b) statements that may be submitted in response to the request for SOI for architect-engineer services, including proposals for joint ventures; and

(c) supplemental statements of qualifications and performance data, if their submission was required.

All statements and supplemental statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the request for SOI for architect-engineering services.

R33-5-590. Selection of Firms for Discussions.

The selection committee shall select for discussions no fewer than three firms evaluated as being professionally and technically qualified unless fewer than three firms responded to the request for SOI. The Procurement Officer shall notify each firm in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of interest, qualifications and performance data indicate that one firm is clearly most qualified and if the scope and nature of the services are clearly defined.

R33-5-600. Discussions.

Following evaluation of the statements of interest, qualifications and performance data, the selection committee shall hold discussions with the firms selected pursuant to section R33-45-590 regarding the proposed contract. The purposes of these discussions shall be to:

(a) determine each firm's general capabilities and qualifications for performing the contract; and

(b) explore the scope and nature of the required services and the relative utility of alternative methods of approach.

R33-5-610. Selection of the Most Qualified Firms.

After discussions, the selection committee shall reevaluate and select, in order of preference, the firms which it deems to be the most highly qualified to provide the required services. The selection committee shall document the selection process indicating how the evaluation criteria were applied to determine the ranking of the most highly qualified firms.

R33-5-620. Negotiation and Award of Contract.

The Procurement Officer shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the State. Contract negotiations shall be directed toward:

(a) making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(b) determining that the firm will make available the necessary personnel and facilities to perform the services within the required time, and

(c) agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

R33-5-630. Failure to Negotiate Contract with the Most Qualified Firm.

(a) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.

(b) Upon failure to negotiate a contract with the most qualified firm, the Procurement Officer shall enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that firm. If negotiations again fail, negotiations shall be terminated as provided in R33-5-630(a) of this section and commenced with the next most qualified firm.

R33-5-640. Notice of Award.

Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of the award shall be made available to the public.

R33-5-650. Failure to Negotiate Contract with Firms

Initially Selected as Most Qualified.

Should the Procurement Officer be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms. additional firms shall be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with section R33-5-630 until an agreement is reached and the contract awarded.

KEY: government purchasing
May 27, 2003 63-56-1 et seq.
Notice of Continuation November 23, 2007

R33. Administrative Services, Purchasing and General Services.
R33-8. Property Management.
R33-8-101. Quality Assurance, Inspection, and Testing.

The procurement officer shall take steps to ascertain or verify that supplies, services, or construction items conform to specifications. In performing this duty, the procurement officer may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories, and contract with others for inspection or testing work as needed. In accordance with section 63-56-205, the procurement officer may delegate responsibility for inspection and testing to using agencies.

R33-8-102. Warehousing and Storage.

Purchasing agencies are delegated the authority to exercise supervision of any receiving, storage, and distribution facilities and services within their purview.

R33-8-103. Inventory Management.

Purchasing agencies are delegated the authority to exercise supervision of all inventories of tangible personal property belonging to them. All property located in warehouses and similar storage areas shall be inventoried annually, and accountability for the property shall reside with the respective agencies.

R33-8-201. Surplus Property.

For the disposition of surplus property refer to R28.

KEY: government purchasing
1991 63-56
Notice of Continuation November 23, 2007

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

Promulgated under authority of Section 4-32-7.

R58-10-2. Purpose.

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

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

Accordingly, the Division adopts the meat and poultry inspection standards and procedures as specified in Title 9, Chapter III, Sub-Chapter A, Agency Organization and Terminology; Mandatory Meat and Poultry Products Inspection and Voluntary Inspection and Certification, Part 300 through 381; Sub-Chapter D, Food Safety and Inspection Service Administrative Provisions. Part 390 and 391, Sub Chapter E, Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, Part 416, 417, 424, 430, 441, and 500. Code of Federal Regulations, Animal and Animal Products, 9 CFR 300 through 500, January 1, 2007 edition, which is incorporated by reference within this rule.

KEY: food inspection
November 8, 2007 **4-32-7**
Notice of Continuation February 3, 2005

R58. Agriculture and Food, Animal Industry.
R58-11. Slaughter of Livestock.
R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

R58-11-2. Definitions.

A. "Department" - Utah Department of Agriculture and Food.

B. "Commissioner" - Commissioner of Agriculture and Food or his representative.

C. "Business" - An individual or organization receiving remuneration for services.

D. "Food" - Product intended for human consumption.

E. "Owner" - A person holding legal title to the animal.

F. "Farm Custom Slaughtering" - The slaughtering, skinning and preparing of livestock by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal. Unless express prior permission is given by a department representative the place of slaughter shall be on the animal's owner's property.

G. "Permit" - Official written permission by the Utah Department of Agriculture and Food to do farm custom slaughtering.

H. "Permittee" - A person who possesses a valid farm custom slaughtering permit.

I. "Immediate Family" - Those living together in a single dwelling unit and/or their sons and daughters.

J. "Property Owner" - A person having legal title to or who is a tenant operator, or lessee of such property.

K. "Adulterated" - As outlined in 9 C.F.R 301.2, 1 Through 8; 381.1 (4), January 1, 2007 edition.

L. "Misbranded" - as outlined in 9 C.F.R. 301.2 1 Through 12, Sections 316.6 and 317.16; 381.1(31), January 1, 2007 edition.

M. "Detain or Embargo" - Holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

N. "Bill of Sale for Hides" - A hide release or some other formal means of transferring the title of hides.

O. "Emergency Slaughter" - Emergency Slaughter is no longer allowed even for ambulatory injured cattle, 9 Code of Federal Regulations 311.27 amended. 9 CFR January 1, 2007 edition 309.2(a)(b) Non-ambularoty disabled cattle are not allowed to enter any Federal, State, or Custom Exempt Facility. Cattle Prohibited From Slaughter: Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions. They are not allowed to enter any plant.

P. "Custom Slaughter-Release Permit" - A permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered. The brand inspection certificate will include the age of each beef slaughtered that is recorded on the brand certificate. The original copy will be retained by the brand inspector. Copies will accompany the farm custom slaughter tag. A copy will be sent to the Department by the permittee with the Farm Custom Slaughter Tags and a copy will serve as the bona fide bill of sale for the hide.

R58-11-3. Registration and Permit Issuance.

A. Farm Custom Slaughtering Permit.

1. Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a permit will be made on a department form for a Farm Custom Slaughter Permit. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Permits will be valid for the calendar year (January 1 to December 31). Each permittee will be required to re-apply for a permit every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

2. Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has completed and signed the registration form.

3. A fee of $75 must be paid prior to permit issuance.

R58-11-4. Equipment and Sanitation Requirements.

A. Unit of vehicle and equipment used for farm custom slaughtering:

1. The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

2. A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

3. Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

a. A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

4. A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

5. A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

6. Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

7. Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

8. Approved denaturing agent shall be available for use during all processing times. Denaturing shall be accomplished as outlined in 9 C.F.R. 325.13, January 1, 2007 edition.

9. When a permittee transports uninspected meat to an establishment for processing, he shall:

a. do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and

b. transport the meat in such a way that it is properly protected; and

c. deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

10. Sanitation.

1. Unit or Vehicle.

a. The unit or vehicle must be thoroughly cleaned after each slaughter.

2. Equipment.

a. All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

b. Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

3. Inedibles.

a. Inedibles shall be placed in designated containers and be properly denatured, and the inedible containers must be clearly marked (Inedible Not For Human Consumption in letters not less then 4 inches in height).

b. Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

4. Personal Cleanliness.

a. Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medications and similar substances.

b. Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

c. No permittee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

d. Hand wash facilities shall be used as needed to maintain good personal hygiene.

R58-11-5. Slaughtering Procedures.

A. Slaughter Area - Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

B. Humane Slaughter - Slaughtered animals shall be rendered insensible to pain by a single blow, or gun shot or electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

C. Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

D. Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

E. Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

F. Carcass washing - Hair, dirt and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

R58-11-6. Identification and Records.

A. Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any licensed slaughter (including permittees) to slaughter livestock which do not have a Brand Inspection Certificate at time of slaughter.

1. Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection Certificate (Custom Slaughter-Release Permit).

2. Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of $1 each. These tags will be required on beef, pork, and sheep.

B. Records.

1. The Custom Slaughter-Release Permit will record the following information:

a. An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold. (Signature).

b. In addition to this affidavit, the following information will be recorded:

(1) date;

(2) owner's name, address and telephone number;

(3) animal description including brands and marks;

(4) Farm Custom Slaughter tag number.

2. The Farm Custom Slaughter tag must record the following information:

a. date;

b. owner's name, address and telephone number;

c. location of slaughter;

d. name of permittee;

e. permittee permit number; and

f. carcass destination.

3. Prior to slaughter the permittee shall:

a. Prepare the Farm Custom Slaughter tag with complete and accurate information;

(1) One tag shall stay in the permit holder's file for at least one year.

(2) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the permittee.

(3) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(4) Hide Purchase - Permittees receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

R58-11-7. Enforcement Procedures.

A. Livestock Slaughtering Permit:

1. It shall be unlawful for any person to slaughter or assist in slaughtering livestock as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering Permit issued to him by the Department.

2. Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a permit.

3. Permit may be renewed annually and shall expire on the 31st of December of each year.

B. Suspension of permit - permit may be suspended whenever:

1. The Department has reason to believe that an eminent public health hazard exists;

2. The permit holder has interfered with the Department in the performance of its duties;

3. The permittee violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.

C. Warning letter - In instances where a violation may have occurred a warning letter may be sent to the permittee which specifies the violations and affords the holder a reasonable opportunity to correct them.

D. Hearings - Whenever a permittee has been given notice by the Department that suspected violations may have occurred

or when a permit is suspended he may have an opportunity for a hearing to state his views before the Department.

E. Reinstatement of Suspended Permit - Any person whose permit has been suspended may make application for the purpose of reinstatement of the permit. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the permit may be reinstated.

F. Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a permittee which does not meet the requirements of these rules may be detained or embargoed.

G. Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

KEY: food inspection
November 8, 2007 4-32-8
Notice of Continuation September 2, 2005

R123. Auditor, Administration.
R123-5. Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations.
R123-5-1. Authority.

1. As required by Section 51-2a-301, this rule provides the guidelines, qualifications criteria, and procurement procedures for audits required to be made by Section 51-2a-201.

R123-5-2. Definitions.

1. "Auditor" means a certified public accountant licensed to conduct audits in the state and includes any certified public accounting firm as defined by Section 58-26a-102.

2. "Political subdivision" means all cities, counties, school districts, local districts, interlocal organizations, and any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes.

3. "Nonprofit organization" means any corporation created under Chapter 16-6a.

R123-5-3. Audit Standards and Requirements.

1. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with Government Auditing Standards most recently published and issued by the Comptroller General of the United States.

2. The State Auditor shall adopt and maintain a legal compliance audit guide containing those fiscal laws and compliance requirements for state funds distributed to, and expended by, political subdivisions and non-profit organizations. This legal compliance audit guide may specify:

a. which grants and programs shall be considered major grants, and the compliance requirements which must be tested by the auditor,

b. the general compliance requirements applicable to all political subdivisions, and the audit requirements applicable to general compliance requirements,

c. the format for the auditor's statement expressing positive assurance with state fiscal laws identified by the State Auditor, and

d. those items related to internal controls and other financial issues which shall be included in the auditor's letter to management that must be filed with the audited financial statements.

3. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with the legal compliance audit guide maintained by the State Auditor.

R123-5-4. Audit Procurement.

The decision to retain an entity's auditor rests with the governing body of the entity. However, the auditor performing the audit must meet the peer review and continuing education requirements of Government Auditing Standards issued by the Comptroller General of the United States. If the governing body rebids the audit of its financial statements, it shall comply with the following audit procurement requirements:

a. Proposals will be obtained from any interested and qualified certified public accountant licensed to perform audits in the state, which may include the auditor currently performing the entity's audit. Notice may be given to potential auditors either through invitation or by notice published in a newspaper of general circulation. To promote competition it is recommended that at least three auditors be invited to participate in bidding for the audit.

b. The entity shall distribute a "request for proposal" to all auditors who meet the qualification criteria set by the procuring organization interested in bidding for the audit. As a minimum, the request for proposal shall contain the following:

(i) the name and address of the entity requesting the audit and its designated contact person,

(ii) the entity to be audited, the scope of services to be provided, and specific reports, etc. to be delivered,

(iii) the period to be audited,

(iv) the format in which the proposals should be prepared,

(v) the date and time proposals are due, and

(vi) the criteria to be used in evaluating the bid.

c. The entity may select the auditor or audit firm that the governing body desires to perform its audit and may reject any bid.

R123-5-5. Responsibility for Audit Quality.

1. The governing body of each political subdivision is responsible to ensure that the political subdivision obtains a quality audit of its financial records.

2. The governing body may appoint an audit committee with the responsibility of making recommendations to the governing body for selection of an auditor, ensuring that the auditor meets qualification requirements, and ensuring that the auditor complies with professional standards.

3. If the governing body appoints a separate audit committee, then the governing body shall review the recommendations of the audit committee and make the selection of the auditor.

4. The audit committee will report its assessment of the auditor's compliance with professional standards to the governing body.

5. The auditor shall report the results of the audit to the governing body.

6. The governing body shall respond to the specific recommendations included in the auditor's letter to management. This response shall be remitted with the audited financial statements to the state auditor.

KEY: auditing, non-profit organizations
1990 51-2a-201
Notice of Continuation October 26, 2007

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.
R156-22-101. Title.

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is in an area where the licensee has demonstrated competence by adequate education, training and experience;

(c) arises from, and is directly related to, work performed in the licensed profession;

(d) is substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and

(e) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1).

(6) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time engineering experience under supervision of one or more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(7) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(8) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(9) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-502.

R156-22-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 22.

R156-22-104. 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.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree

program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Center for Professional Engineering Services (CPEES). Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 22 semester hours or 32 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system;

(iv) surveying field techniques; and

(b) the remainder of the 22 semester hours or 32 quarter hours may be made up of successful completion of courses from the following content areas:

(i) photogrammetry;

(ii) studies in land records or land record systems;

(iii) survey instrumentation;

(iv) global positioning systems;

(v) geodesy;

(vi) control systems;

(vii) land development;

(viii) drafting, not to exceed six semester hours or eight quarter hours;

(ix) algebra, geometry, trigonometry, not to exceed six semester hours or eight quarter hours;

(x) geographic information systems.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) Experience must be progressive on projects that are of increasing quality and requiring greater responsibility.

(b) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(c) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(d) Unless otherwise provided in Subsection (1)(e), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(e) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(f) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(g) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(h) In addition to the supervisor's docmentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(i) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(d) or other qualified person under Subsection (1)(e) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards an ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision

documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(A) The qualifying experience must be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of full time or equivalent part time qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall document eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(4)(a)(i)(A) and four of the eight years required in R156-22-302c(4)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

(A) operation of various instrumentation;

(B) review and understanding of plan and plat data;

(C) public land survey systems;

(D) calculations;

(E) traverse;

(F) staking procedures;

(G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

(A) drafting (includes computer plots and layout);

(B) reduction of notes and field survey data;

(C) research of public records;

(D) preparation and evaluation of legal descriptions; and

(E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(3)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE)

Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed the experience requirements set forth in Subsection R156-22-302c(2).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PLS examination, an applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-302b(2) and 302c(4).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on December 31 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

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

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

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

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration

and completion are available for review.

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

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

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

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

(8) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

R156-22-305. Inactive Status.

(1) A person currently licensed and in good standing as a professional engineer, professional structural engineer or professional land surveyor may apply for a transfer of that license to inactive status if:

(a)(i) the licensee is at least 60 years of age;

(ii) the licensee is disabled; or

(iii) the division finds other good cause for believing that the licensee will not return to the practice as a professional engineer, professional structural engineer or professional land surveyor;

(b) the licensee makes application for transfer of status and registration and pays a registration fee determined by the department under Section 63-38-3.2; and

(c) the licensee, on application for transfer, certifies that he will not engage in the practice for which a license is required while on inactive status.

(2) Each inactive license shall be issued in accordance with the two-year renewal cycle established by Section R156-1-308a.

(3) Inactive status licensees may not engage in practice for which a license is required.

(4) Inactive status licensees are not required to fulfill the continuing professional education under this rule.

(5) Each inactive status licensee is responsible for renewing his inactive license according to division procedures.

(6) An inactive status licensee may reinstate his license to active status by:

(a) submitting an application in a form prescribed by the division;

(b) paying a fee determined by the department under Section 63-38-3.2; and

(c) showing evidence of having completed the continuing professional education requirement established in Subsection R156-22-304(9).

R156-22-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), 58-22-501 and 58-22-503, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permits any person to use his or her license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the

discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

February 22, 2007 58-22-101

Notice of Continuation November 15, 2007 58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rules.
R156-37-101. Title.

These rules are known as the "Utah Controlled Substances Act Rules."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or these rules:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-103. Purpose - Authority.

These rules are adopted by the division under the authority of Subsections 58-1-106(1)(a) and 58-37-6(1)(a) to enable the division to administer Title 58, Chapter 37.

R156-37-104. 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.

R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse;
(j) certified nurse midwife;
(k) certified registered nurse anesthetist;
(l) Class A pharmacy-retail operations located in Utah;
(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
(i) closed door;
(ii) hospital clinic pharmacy;
(iii) methadone clinics;
(iv) nuclear;
(v) branch;
(vi) hospice facility pharmacy;
(vii) veterinarian pharmaceutical facility;
(viii) pharmaceutical administration facility; and
(ix) sterile product preparation facility.
(n) Class C pharmacy located in Utah engaged in:
(i) manufacturing;
(ii) producing;
(iii) wholesaling; and
(iv) distributing.
(o) Class D Out-of-state mail order pharmacies.
(p) Class E pharmacy including:
(i) medical gases providers; and
(ii) analytical laboratories.
(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:
(a) submit an application in a form as prescribed by the division; and
(b) shall pay the required fee as established by the division under the provisions of Section 63-38-3.2.

(2) Any person seeking a controlled substance license shall:
(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or
(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):
(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency; or
(ii) other activity approved by the Division in collaboration with the appropriate board.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:
(a) qualifications to engage in practice with controlled substances; and
(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.

The division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

R156-37-304. Qualifications for Licensure - Examinations.

Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the division on the subject of controlled substance laws.

R156-37-305. Exemption from Licensure - Animal Euthanasia and Law Enforcement Personnel.

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

(1) Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

(2) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances which come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the division all controlled substance license certificates issued by the division to the division upon an action which revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under these rules or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

R156-37-601. Access to Records, Facilities, and Inventory.

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, these rules or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and these rules or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

R156-37-602. Records.

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) an automated data processing system is used for the storage and immediate retrieval of refill information for prescription orders for controlled substances in Schedule III and IV, in accordance with federal guidelines.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance,

each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being

prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall:

(a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or

(b) require the authorization of the division after submission to the division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a division authorized agent as is specifically instructed by the division in its written authorization.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the division or its agents for inspection for a period of five years.

R156-37-607. Surrender of Suspended or Revoked License.

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

R156-37-608. Herbal Products.

The division shall not apply the provisions of the Controlled Substance Act or these rules in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.

(1) In accordance with Subsections 58-37-7.5(6)(a), the format in which the information required under Section 58-37-7.5 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk; or

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the division and receives prior approval.

(3) The division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) Each pharmacy or pharmacy group may submit the data either weekly, bi-weekly, or monthly. Any pharmacy which does not declare its intention for timely submission of data will be presumed to have chosen monthly submission.

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the division including:

(a) the pharmacy name;

(b) NABP number;

(c) the period of time covered by each submission of data;

(d) the number of prescriptions in the submission;

(e) the submitting pharmacist's signature attesting to the accuracy of the report; and

(f) the date the submission was prepared.

R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsections 58-37-7.5(5)(c), (6)(b), (7)(b), and (8)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).

(4) Any individual may request information in the database relating to that individual's receipt of controlled substances. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name,

home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph (4)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(5) Before data is released upon oral request, a written request may be required and received.

(6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, protocols for the project and a description of the data needs from the Database;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a stand alone database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

KEY: controlled substances, licensing
October 22, 2007 58-1-106(1)(a)
Notice of Continuation March 15, 2007 58-37-6(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(14), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(2) "Incidental", as used in Subsection 58-55-102(35), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract.

(3) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(4) "Mechanical", as used in Subsections 58-55-102(18) and 58-55-102(28), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(5) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(6) "School" means a Utah school district, applied technology college, or accredited college.

(7) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 55.

R156-55a-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.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is practicing a construction trade or specialty contractor classification which is not listed is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(19).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(11) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(28).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instructor. A General Engineering Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(19).

I102 - General Building Trades Instructor. A General Building Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(18) or 58-55-102(28).

I103 - Electrical Trades Instructor. An Electrical Trades Instructor is a construction trades instructor authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instructor. A Plumbing Trades Instructor is a construction trades instructor authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instructor. A Mechanical Trades Instructor is a construction trades instructor authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but

excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor. Grading and preparing land for architectural, horticultural, and the decorative treatment, arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, and other decorative vegetation. Construction of small decorative pools, tanks, and fountains. Hothouses and greenhouses, retaining walls, fences, walks, garden lighting of 50 volts or less, and sprinkler systems. Patio areas when they are an incidental part of the prime contract.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures so that alterations, additions, repairs, and new sub-structures may be built.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

(i) S281 Single Ply and Specialty Coating Contractor;

(ii) S282 Build-up Roofing Contractor;

(iii) S283 Shingle and Shake Roofing Contractor;

(iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), an applicant for licensure as a contractor or a construction trades instructor shall pass the following examinations as a condition precedent to licensure as a contractor or a construction trades instructor:

(a) the Trade Classification Specific Examination; and

(b) the Utah Contractor Business - Law Examination.

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

(3) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and

(b) no sooner than six months following any failure thereafter.

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

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) All experience shall be directly supervised by the applicant's employer.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(4) Requirements for I101 General Engineering Trades Instructor, I102 General Building Trades Instructor, I103 Electrical Trades Instructor, I104 Plumbing Trades Instructor,

I105 Mechanical Trades Instructor license classifications:

An applicant for construction trades instructor license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

Except as set forth in paragraph (6), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of paragraphs (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Each applicant for licensure as a I103 Electrical Trades Instructor shall also be licensed as either a journeyman or master electrician or a residential journeyman or residential master electrician.

(2) Each applicant for licensure as a I104 Plumbing Trades Instructor shall also be licensed as either a journeyman plumber or a residential journeyman plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least $100,000 for each incident and $300,000 in total.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instructor classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instructor and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instructor classification as determined by the qualifier.

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

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

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the following continuing education requirements:

(a) complete three hours of core continuing education; and

(b) an additional three hours of professional continuing education.

R156-55a-303b. Continuing Education - Standards.

(1) Continuing education courses are not required to be submitted for approval by the Commission, but must meet the following criteria:

(a) content must be relevant to the practice of the construction trades and consistent with the laws and rules of this state;

(b) learning objectives must be reasonably and clearly stated;

(c) teaching methods must be clearly stated and appropriate;

(d) faculty must be qualified, both in experience and in teaching expertise;

(e) documentation of attendance must be provided; and

(f) all core education and professional education hours shall be clock hours.

(2) The three hour core education requirement shall include one or more of the following course content areas:

(a) construction codes;

(b) construction laws and rules; and

(c) construction practices.

(3) Credit for core education and professional education shall be recognized in accordance with the following. Hours shall be recognized for core education and professional education completed in blocks of time of not less than 50 minutes, in formally established classroom courses, seminars, lectures, conferences, training sessions or distance learning modules, which meet the criteria listed in Subsection (1) above and conducted by or under the sponsorship of:

(a) a recognized university or college;

(b) a state agency;

(c) a professional association, including:

(i) the Associated Builders and Contractors Association;

(ii) the Associated General Contractors Association;

(iii) the Utah Home Builders Association;

(iv) the Utah Mechanical Contractors Association; or

(d) other recognized education programs as approved by the Commission with the concurrence of the Director.

(4) Professional education shall not include courses in office and business skills, physical well-being and personal development, and meetings held in conjunction with the general business of the licensee.

(5) The continuing education requirement for electricians as established in Section R156-55b-304, which is completed by an electrical contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-501(21) and implemented herein.

(6) A licensee shall be responsible for maintaining competent records of completed core and other continuing education for a period of two years after the two year period to which the records pertain.

R156-55a-304. Construction Trades Instructor License Qualifiers.

In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304

shall also apply to construction trades instructors.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the division.

R156-55a-306. Financial Responsibility - Division Audit - Financial Statements.

In accordance with Section 58-55-306, the following shall apply:

(1) All financial statements shall cover a period of time ending no earlier than the last tax year.

(2) Financial statements prepared by an independent certified public accountant (CPA) shall be "audited", "reviewed", or "compiled" financial statements prepared in accordance with generally accepted accounting principles and shall include the CPA's report stating that the statements have been audited, reviewed or compiled.

(3) Division reviewed financial statements shall be submitted in a form acceptable to the division and shall include the following:

(a) the balance sheet;

(b) all schedules;

(c) a complete copy of the applicant's most recently filed federal income tax return;

(d) a copy of the applicant's bank or broker account statements; and

(e) an acceptable credit report for the applicant.

(4) An acceptable credit report is:

(a) dated within 30 days prior to the date the application is received by the division;

(b) free from erasures, alterations, modifications, omissions, or any other form of change which alters the full and complete information provided by the credit reporting agency;

(c) a report from:

(i) Trans Union, Experian, and Equifax national credit reporting agencies; or

(ii) National Association of Credit Managers (NACM); or

(iii) another local credit reporting agency that includes a report for each of the three national credit reporting agencies names in Subsection (i) above.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as an instructor for a school licensed as a construction trades instructor shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instructor shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in

Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-311. Reorganization of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity or conversion constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the division and the board as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the division, to provide proof of insurance coverage within 30 days.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A58-55-501(21) $ 500.00 $ 500.00
58-55-504(2)	$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-504(2)	$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

KEY: contractors, occupational licensing, licensing
November 26, 2007
Notice of Continuation November 8, 2006

58-1-106(1)(a)
58-1-202(1)(a)
58-55-101
58-55-308(1)
58-55-102(35)
58-55-501(21)

R156. Commerce, Occupational and Professional Licensing.
R156-59. Professional Employer Organization Registration Act Rule.
R156-59-101. Title.

This rule shall be known as the "Professional Employer Organization Registration Act Rule."

R156-59-103. Authority.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 59.

R156-59-104. 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.

R156-59-301. Qualifications for Registration - Designated Assurance Organization.

(1) The qualifications certified by an assurance organization are as set forth in Subsections 58-59-302.5(2) and (3). No additional qualifications are established by rule.

(2) The Employer Services Assurance Corporation (ESAC) meets the requirements set forth in Subsection 58-59-302.5.

KEY: professional employer organization, registration
November 8, 2007 **58-1-106(1)(a)**
58-59-101
58-59-302(2)(e)(i)
58-59-302.5(1)

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rules.
R156-67-101. Title.

These rules shall be known as the "Utah Medical Practice Act Rules".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or these rules:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(5), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 67.

R156-67-104. 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.

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part; or

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part; or

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step; or

(d) the LMCC examination, Parts 1 and 2; or

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part II or the USMLE step 3; or

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In addition all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsection 58-67-302(2)(d), an applicant under the following circumstances may be required to take the SPEX examination to document his qualification for licensure:

(a) has not practiced in the past three years;

(b) has had disciplinary action in the past;

(c) has a physical or mental impairment which may affect his ability to safely practice; or

(d) has had a history of substance abuse.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

R156-67-303. 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 67 is established by rule in Section R156-1-308.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in category 1 offerings as established by the ACCME in each preceding two year licensure cycle.

(2) The standard for qualified continuing professional education is that it consist of offerings or courses approved by institutions accredited by the ACCME to approve continuing medical education.

(3) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation should be retained until the next renewal cycle. Documentation of completed qualified continuing professional education shall consist of any of the following:

(a) certificates from sponsoring agencies;

(b) transcripts of participation on applicable institutions letterhead; and

(c) "CME Self-Reporting Log".

(4) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician excepted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the ACGME, for which exception from licensure is requested under the provisions of Subsection 58-1-307(1)(c) shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(4) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in these rules shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or

to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number; and

(14) engaging in alternate medical practice except as provided in Section R156-67-603.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the Code of Medical Ethics of the Council on Ethical and Judicial Affairs as published in the AMA Policy Compendium, 2001 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: physicians, licensing
February 19, 2002 **58-67-101**
Notice of Continuation June 26, 2006 **58-1-106(1)**
58-1-202(1)

R202. Community and Culture, Housing and Community Development, Community Services.
R202-100. Community Services Block Grant Rules.
R202-100-1. Authority.

This rule is authorized under Section 9-4-202, U.C.A. 1953, which allows the Department of Community and Culture (DCC) to receive funds for and to administer federal aid programs.

R202-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant (CSBG) authorized under the Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R202-100-3. Eligible Grantees for CSBG Programs and Projects.

A. Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities (hereinafter referred to as local grantees) for them to administer directly or, at their option, to sub-contract (hereinafter referred to as local sub-grantees) for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan each fiscal year.

B. Whenever a public grantee chooses to sub-contract all program operations to a private entity rather than administer them directly, the private entity must be a non-profit organization directed by a board whose composition complies with Section 675 (c)(3) of the Community Services Block Grant Act.

R202-100-4. Assurances Required by CSBG Act.

All grantees shall be required to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by Community Services Block Grant Program Directives prepared by the State Community Services Office (SCSO).

R202-100-5. Compliance.

Local grantees must maintain their eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, and contractual agreements. The state reserves the right to examine all aspects of CSBG funded activities to ensure that this is the case.

R202-100-6. Qualifications.

Local grantees must demonstrate that they have in place, or shall have in place prior to undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds shall be spent efficiently and effectively. When activities are sub-contracted, the local grantee must have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing such monitoring and evaluation results. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

R202-100-7. Program Participant Eligibility.

Income eligibility for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in Section 673 of the CSBG Act.

R202-100-8. Funds Allocation.

A. CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to local agencies by the following formula:

(1) All agencies selected for funding shall be awarded an equal, minimum base amount.

(2) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the local grantees based on the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment.

R202-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible grantees as a SCSO Community Services Block Grant Program Directives. A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible. Prospective CSBG grantees shall be notified of application status 60 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the local grantee for appropriate changes. The Community Services Office will provide technical assistance to any eligible agency scoring below the minimum.

R202-100-10. Award Procedures.

The state shall enter into a contract with local grantees October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R202-100-11. Fiscal Operations Procedures.

A. Each local grantee shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

(1) Purchasing procedure
(2) System of cash control
(3) Payroll system
(4) Internal and external reporting systems

B. Fiscal procedures shall be in compliance with applicable state and federal regulations and conform with generally accepted accounting procedures.

R202-100-12. Financial Reports and Reimbursements.

Financial reports (Form CSBG 611-D) are to be submitted on a monthly basis, no later than twenty (20) days following the end of each month. Local grantees shall receive reimbursement based on a monthly financial status report and certification of work program activities. All reports must have an authorized signature, i.e., the contract signatory or someone designated by the signatory, with a letter of designation filed with the state.

R202-100-13. Administrative Cost.

Administrative costs include allowable expenditures incurred to administer the CSBG through an indirect cost plan, approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO. Such costs should not exceed 10%.

R202-100-14. Travel and Per Diem.

Travel, per diem and allowances for staff and board members shall be determined by approved local agency guidelines which establish rates of reimbursement.

R202-100-15. Purchasing, Receiving and Accounts Payable.

A. Grantee agencies shall develop and have approved procedures for handling purchasing, receiving, and accounts payable. (In the absence of a local procedure, the state procedure shall be followed.) These procedures should include:

(1) Pre-numbered purchase orders and/or vouchers for all items of cost and expense.

(2) Procedures to insure procurement at competitive prices.

(3) Receiving reports to control the receipt of merchandise.

(4) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.

(5) Invoices matched with purchase orders and receiving reports.

(6) The local grantee must have adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.

(7) Adequate segregation of duties in that different individuals are responsible for:

(a) Purchase;

(b) Receipt of merchandise or services; and

(c) Voucher approval

B. A list of anticipated equipment purchases must accompany the application for funding. Purchases over $1,000 must receive written state approval.

R202-100-16. Property and Equipment.

A. Each local grantee shall develop procedures for control of property and equipment. These procedures should include; but are not limited to:

(1) An effective system of authorization and approval of equipment purchase;

(2) Accounting practices for recording assets;

(3) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(4) Effective procedures for authorizing and accounting for equipment disposal; and

(5) Secure storage of property and equipment.

R202-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy related home repairs) of any building or other facility except as this prohibition may be waived under conditions described in Section 680 (b) of the CSBG act.

R202-100-18. Personnel Policies.

A. Each local grantee shall maintain written personnel policies, available for review, which should include:

(1) Classification and pay plan;

(2) Policies governing selection and appointment;

(3) Conditions of employment and employee performance;

(4) Employee benefits;

(5) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(6) Personnel records and payroll procedures;

(7) Job description for all positions;

(8) Drug Free Work Place Policy.

R202-100-19. Civil Rights.

A. All CSBG funded programs shall comply with the nondiscrimination provisions contained in Section 677 of the Community Services Act.

B. Local grantees shall be required to have on file an affirmative action plan that describes what they will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to deal with allegations of discrimination on the part of prospective and current staff members or program participants.

C. The provisions of this section shall apply to any and all grantees and sub-grantees, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R202-100-20. Prohibition of Political Activities.

Each CSBG grantee shall be responsible for assuring adherence to political activity prohibitions contained in Sec. 675 (c) (7) of the CSBG Act. Monitoring of sub-grantees shall be required as a part of administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the state CSO immediately along with reports of measures taken by the grantee to restore compliance.

R202-100-21. Audits and Inspection.

Each local grantee shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of OMB Circular A-128, A-122 and A-133. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R202-100-22. Suspension or Termination of Funds.

A. DCC may suspend funding to a local grantee if monitoring reports or independent audit reports indicate continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements. If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, DCC may terminate its contract with local grantee and make the remaining funds available to other eligible entities. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the local grantee fails to produce corrective action to DCC's satisfaction. The local grantee shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the grantee for the purpose of setoff until such time as the exact amount of damage due the state from the grantee is determined.

B. Pursuant to the provisions of the contract between the state and local grantee, delegation of funds and activities to others may not be made without prior approval of DCC, SCSO.

R202-100-23. Transfer of Funds.

Because of the limited funds anticipated to be made available, DCC shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.

R202-100-24. Amendments/Waivers.

A. Prior approval for budget changes is required in the following instances:

(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed $10,000 or five percent of the grant budget, whichever is greater, for grants of $100,000 or larger.

(2) For grants under $100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.

(3) Limited flexibility in budget adjustments will be

allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):

(a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;

(b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;

(c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;

(d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;

B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.

C. Grantees may also request contract period end dates be extended for up to sixty (60) days in order to spend program or project carryover funds amounting to less than ten (10) percent, or an amount approved by the state, of the total contract amount.

R202-100-25. Project Monitoring and Evaluations.

A. Monitoring will be accomplished through review of the fiscal and progress reports and on-site. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

B. Evaluation of CSBG funded programs shall be conducted either by the state or by the local CSBG grantees and shall be distinct from both compliance monitoring and the state's examination of CSBG grantees to ensure that they are eligible to receive CSBG funds and that they are in compliance with all CSBG related obligations. Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.

C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.

R202-100-26. Program Reporting Requirements.

Local grantees shall be required to maintain client profile sheets on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served, by category, shall be submitted to SCSO on the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time.

R202-100-27. Appeals Procedure.

A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.

B. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:

(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DCC, approved and signed by its elected officials, setting forth:

(a) The decision that is being questioned;

(b) The date on which the grantee received notice of the decision;

(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;

(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.

(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of DCC.

(3) Prior to the scheduled hearing, the SCSO staff shall contact the Board of Directors of the appellant grantee:

(a) To obtain additional information pertinent to the issue;

(b) To clarify any misunderstanding of fact or policy;

(c) To explore possible alternatives that would eliminate the necessity for a hearing;

(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.

(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify DCC at least five (5) working days prior to the hearing who that person will be.

(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the DCC Executive Director. The DCC Executive Director shall issue a written decision on the appeal within 10 working days after receipt of the hearing officer's recommendations.

(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the Executive Director of DCC.

R202-100-28. Citizen Participation.

A. The state requires citizen participation and supports maximum participation of all interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

1. Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in Sec. 675 (c) (3).

a. A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the poor is to be available for review.

b. One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

c. The remainder of the members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description should include a process for interested private sector groups to petition for membership and how the petition will be considered.

B. As a part of the problem assessment portion of the planning phase (conducted every three years), each local agency shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R202-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published in the Federal Register.

R202-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO Community Services Block Grant Program Directives.

R202-100-31. Application Process and Submission Timetable.

A. The grant application phase of CSBG for local grantees involves:

(1) A local poverty problem identification process developed under prescribed criteria outlined in a Community Services Block Grant Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by May 15 every three (3) years, starting in 1998;

(2) The development of a work program for addressing problems identified and prioritized includes;

(a) Community review of draft work program;

(b) Approval of final plan by local boards or by local officials;

(c) Submission to state office by June 30 of each year.

(3) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

R202-100-32. Budget Estimate.

By May 1, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R202-100-33. Public Review and Comment.

A. After the work program has been prepared, but before Board approval, the applicant must provide ample opportunity for its' review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The grantee must submit all of the comments of persons and organizations choosing to respond with the application to the State Office of Community Services.

R202-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.

A. The State Community Services Office shall:

(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;

(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;

(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;

(4) Provide standards for determining and verifying the amount of the donated food;

(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;

(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;

(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.

KEY: antipoverty programs, grants, community action programs, food sales tax refunds
January 15, 1998 9-4-202
Notice of Continuation November 7, 2007

R251. Corrections, Administration.
R251-112. Americans With Disabilities Act Implementation and Complaint Process.
R251-112-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. As required by 28 CFR 35.107 (1992 ed.), the Department of Corrections, as a public entity that employs more than 50 persons, adopts, defines, and publishes the complaint procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by the applicable provisions of the Americans With Disabilities Act.

(2) The applicable provisions of 29 C.F.R. 1630 implement the Americans With Disabilities Act, 42 U.S.C. 12101 through 12213, which provide that no qualified individual with a disability, by reason of such disability, be denied employment, be excluded from participation in, or be denied the benefits of services, programs, or activities of the Department of Corrections.

R251-112-2. Definitions.

(1) "ADA" means Americans With Disabilities Act.

(2) "ADA Coordinator" means the Department designee who has the responsibility for the Department's compliance with ADA.

(3) "ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Department of Human Resource Management;

(b) Division of Risk Management;

(c) Division of Facilities Construction Management; and

(d) Office of the Attorney General.

(4) "Department" means the Department of Corrections.

(5) "Disability" means with respect to an individual with a physical or mental impairment that substantially limits one or more major life activities as defined by ADA.

(6) "HRM Representative" means the Director or designee of the Bureau of Human Resource Management within the Department who has responsibility for the Department's compliance with ADA as it relates to employees.

(7) "Qualified person with a disability" means an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, is able to perform the essential functions of a job or meets the criteria established for visiting offenders or accessing other programs and services offered.

R251-112-3. Filing of Complaints.

(1) Any qualified individual with a disability should file a complaint with the Department no later than 60 days of the alleged act of discrimination in order to expedite resolution of the complaint. Any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule should be filed within 60 days of the effective date of this rule.

(2) The complaint shall be filed with the Department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

(a) include the individual's name, address, and phone number;

(b) include the nature and extent of the individual's disability;

(c) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the individual or by the individual's representative.

(4) Complaints filed on behalf of classes of third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R251-112-4. Investigation of Complaint.

(1) The ADA Coordinator or designee and the HRM representative shall use reasonable diligence to investigate complaints received and obtain and document all relevant facts. This may include gathering all information listed in Section R251-112-3(3), if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator or designee may seek assistance from the Department's legal, human resource, budget staff and division directors in determining what action, if any, shall be taken on the complaint. The ADA Coordinator or designee may also consult with the Executive Director in reaching a recommendation.

(3) The ADA Coordinator or designee and the HRM representative shall consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the Department's budget and would require appropriation authority;

(b) facility modifications which require an expenditure of funds which is not absorbable within the Department's budget and would require appropriation authority; or

(c) reclassification or reallocation in grade.

R251-112-5. Issuance of Decision.

(1) Within 30 working days after receiving the complaint, the ADA Coordinator or designee or the HRM representative or designee shall issue a decision outlining in writing or in another accessible format suitable to the individual stating what action, if any, shall be taken on the complaint.

(2) If the ADA Coordinator or designee or the HRM representative or designee is unable to reach a decision within the 30 working day period, the ADA Coordinator or the HRM representative or designee shall notify the individual in writing, or by another accessible format suitable to the individual, why the decision is being delayed and what additional time is needed to reach a decision.

R251-112-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator or designee or the HRM representative or designee by filing an appeal within ten working days from the receipt of the decision.

(2) The appeal shall be filed in writing or another accessible format suitable to the individual with the Executive Director of the Department. The Executive Director may name a designee other than the ADA Coordinator to assist on the appeal.

(3) The appeal shall describe in sufficient detail why the ADA Coordinator's decision does not meet the individual's needs without undue hardship to the Department, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(4) The Executive Director or designee shall review the decision and the appeal. The Executive Director may direct additional investigation as necessary before arriving at an independent conclusion.

(5) The Executive Director or designee may consult with the State ADA Coordinating Committee prior to making any decision that would involve:

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade;

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible format suitable to the individual.

(7) If the Executive Director or designee is unable to reach a decision within the ten working day period, the Executive Director shall notify the individual in writing or by another accessible format suitable to the individual why the decision is being delayed and the additional time needed to reach a decision.

R251-112-7. Classification of Records.

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 Executive Director, ADA Coordinator, HRM representative, 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 Executive Director, ADA Coordinator, HRM representative, or their designees shall be classified as public information.

R251-112-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the Utah State Anti-Discrimination Complaint Procedures; the Federal Americans with Disabilities Act Complaint Procedures; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaint procedures, disabled persons
December 2, 2002 67-19-32
Notice of Continuation November 13, 2007 34A-5-101 to 34A-5-108
63-46a-3(2)

R277. Education, Administration.
R277-402. Online Testing.
R277-402-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Formative assessment" means an activity, such as questioning, observation, interview and assessment, engaged in by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes.

C. "Intent to implement a uniform online summative test system" as used in 53A-1-708(4) means the commitment by the USOE to provide a consistent statewide process for school districts/charter schools to administer 100 percent of CRT U-PASS-required assessments. This includes the willingness of school districts/charter schools to provide documentation of preparatory activities and of actual test-taking by students.

D. "Online formative assessment system" means a system coordinated by the USOE for the online delivery of formative assessments that can be created by teachers, school districts/charter schools, or the USOE. One part of the system is the Utah Test Item Pool Service (UTIPS).

E. "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

F. "Uniform online summative test system" means a statewide process coordinated by the USOE for the online delivery of summative tests required under U-PASS.

G. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3 (administration in fall and spring), 5, and 8 required by this part in all schools within each school district and in charter schools by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in:

(a) language arts (grades 2-11);

(b) mathematics (grades 2-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

(3) a direct writing assessment in grades 6 and 9;

(4) a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) the use of student behavior indicators in assessing student performance.

H. "USOE" means Utah State Office of Education.

I. "USOE item pool" means all test items developed for or by USOE which are intended to support the instruction of the Utah curriculum for Utah K-12 teachers and students.

J. "Utah Test Item Pool Service (UTIPS)" means a system which includes the USOE item pool, all copyrights, logos, the UTIPS website and domain name, all copyrighted materials, and all other items and equipment used to provide and enhance the USOE item pool.

K. "UTIPS Steering Committee" means a committee formed to govern, support, develop and administer UTIPS. The committee is comprised of the elected co-chairs of the UTIPS User's Group and the UTIPS Operators' Group, the USOE Assessment Director, the USOE Computer Based Assessments Specialist, the USOE Curriculum Director, and one at-large member.

R277-402-2. 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-1-708(5) which directs the Board to specify procedures and accountability for online summative testing by school districts/charter schools consistent with existing U-PASS requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide additional definitions and a timeline for expeditious implementation of an educational technology infrastructure for school districts/charter schools to use to satisfy U-PASS requirements through an online testing system.

C. The purpose of this rule is also to provide the requirements for school districts'/charter schools' use of UTIPS.

R277-402-3. Application and Award Procedures.

A. Online testing funds shall be distributed to school districts/charter schools consistent with Section 53A-1-708.

B. The USOE shall provide non-competitive applications to school districts/charter schools for a twenty-five percent base and seventy-five percent per pupil distribution of funds. For the purpose of this funding, all charter schools are considered collectively for the twenty-five percent base.

(1) Applications shall express the intent of the school district/charter school to build educational technology infrastructure and capacity to participate in online testing consistent with Section 53A-1-708.

(2) Applications shall provide a plan for online CRT testing implementation including:

(a) names of participating schools within the school district and participating charter schools;

(b) which CRTs will be assessed online;

(c) number of students who will participate in the online administration of each CRT; and

(d) dates of tests and numbers of students who will participate in the online testing for each year of the school district's/charter school's online testing phase-in plan.

(3) Applications shall provide an evaluation or accountability process for determining and documenting the effectiveness of the online testing phase-in plan.

(4) Application budget shall be consistent with the school district/charter school Consolidated Utah Student Achievement Plan (CUSAP) and educational technology plan.

C. The USOE shall implement and maintain at least one online formative assessment system. School districts/charter schools may access the USOE item pool through regional servers and receive updates to the USOE item pool only consistent with the following conditions:

(1) use of the version of software supported by the UTIPS Steering Committee and available through the UTIPS Operator's Group;

(2) participating in both the UTIPS Operators' Group and User group;

(3) posting of the USOE item pool copyright on their login website;

(4) providing monthly and annual statistics, as determined by the UTIPS Steering Committee to the USOE; and

(5) providing feedback to the USOE regarding item quality and the schools' need for additional items.

D. Regional servers and school districts/charter schools that do not act consistent with conditions under R277-402-3C shall not receive access to the USOE item pool.

R277-402-4. Distribution of Funds.

A. Twenty-five percent of the funds shall be distributed equally to school districts/charter schools that provide applications required under R277-402-3. Seventy-five percent of the funds appropriated by the Legislature in Section 53A-1-708 shall be distributed to school districts/charter schools on a per pupil basis that provide applications required under R277-402-3.

B. Per pupil amounts shall be derived from October student counts of applicants.

C. The USOE shall work with applicants, to the extent of

resources available, to improve the applications for funding.

D. Each school district/charter school plan shall be approved by the USOE prior to the school district/charter school receiving funding under this rule.

E. School districts/charter schools accepting funding under this rule shall ensure compliance with the requirements of this rule.

R277-402-5. Timelines.

A. School districts/charter schools shall submit the plan required under R277-402-3B(2) to the USOE.

B. Applications shall be available from the USOE for funds under this rule.

C. School districts/charter schools shall provide an evaluation of planning or preparation for the use of online testing and an assessment of the actual online testing process as directed by the USOE.

D. Schools that do not provide timely, complete and accurate evaluations may not be considered for continued funding under this rule.

KEY: online testing
November 26, 2007 **Art X Sec 3**
53A-1-708(5)
53A-1-401(3)

R277. Education, Administration.
R277-473. Testing Procedures.
R277-473-1. Definitions.

A. "Advanced English Language Learner student" means the student understands and speaks conversational and academic English language. The student demonstrates reading comprehension and writing skills but may need continued support when engaged in complex academic tasks that require increasingly academic language. The student is identified at the A level on the UALPA but not proficiency on the English Language Arts (ELA) CRT.

B. "Basic skills course" means those courses specified in Utah law for which CRT testing is required.

C. "Board" means the Utah State Board of Education.

D. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

E. "CS" means the USOE Computer Services section.

F. "Days" for purposes of this rule means calendar days unless specifically designated otherwise in this rule.

G. "Direct Writing Assessment (DWA)" means a USOE-designated test to measure writing performance for students in grades six and nine.

H. "Emergent English Language Learner student" means the student understands and responds to basic social conventions, simple questions, simple directions, and appropriate level text. In general, the student speaks, reads, and writes using single phrases or sentences with support. The student may begin to use minimal academic vocabulary with support and participates in classroom routines. The student is identified at the E level on the UALPA.

I. "Intermediate English Language Learner student" means the student understands and speaks conversational and academic English with decreasing hesitancy and difficulty. The student is developing reading comprehension and writing skills, with support. The student's English literacy skills allow for demonstration of academic knowledge. The student reads and writes independently for personal and academic purposes, with some persistent errors. The student is identified at the I level on the UALPA.

J. "Last day of school" means the last day classes are held in each school district/charter school.

K. "Norm-reference Test (NRT)" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

L. "Pre-Emergent English Language Learner student" means the student has limited or no understanding of oral or written English, therefore will be participating by listening. The student may demonstrate comprehension by using a few isolated words or expressions of speech. The student typically draws, copies, or responds verbally in his native language to simple commands, statements and questions. The student may begin to understand language in the realm of basic communication. Reading and writing is significantly below grade level. The student is identified at the P level on the UALPA.

M. "Protected test materials" means consumable and nonconsumable test booklets, test questions (items), directions for administering the assessments and supplementary assessment materials (e.g., videotapes) designated as protected test materials by the USOE. Protected test materials shall be used for testing only and shall be secured where they can be accessed by authorized personnel only.

N. "Raw test results" means number correct out of number possible, without scores being equated and scaled.

O. "Standardized tests" means tests required, consistent with Sections 53A-1-601 through 53A-1-611, to be administered to all students in identified subjects at the specified grade levels.

P. "Utah Academic Proficiency Assessment (UALPA)" means a USOE-designated test to determine the academic proficiency and progress of English Language Learner students.

Q. "Utah Alternative Assessment (UAA)" means a USOE-designated test to measure students with disabilities with severe cognitive disabilities.

R. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests.

S. "USOE" means the Utah State Office of Education.

R277-473-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide specific standards and procedures by which school districts/charter schools shall handle and administer standardized tests.

R277-473-3. Time Periods for Administering and Returning Materials.

A. School districts/charter schools shall administer assessments required under Section 53A-1-603 according to the following schedule:

(1) All CRTs and UAAs (elementary and secondary, English language arts, math, science) shall be given in a six week window beginning six weeks before the last Monday of the end of the course.

(2) The Utah Basic Skills Competency Test shall be given Tuesday, Wednesday, and Thursday of the first week of February and Tuesday, Wednesday, and Thursday of the third week of October.

(3) Sixth and ninth grade Direct Writing Assessment shall be given in a three week window beginning at least 14 weeks prior to the last day of school.

(4) The UALPA shall be administered to all English Language Learner students identified as Pre-Emergent, Emergent, Intermediate and Advanced, or enrolled for the first time in the school district at any time during the school year. The test shall be administered once a year to show progress. The testing window is the school year.

B. School districts shall require that all schools within the school district or charter schools administer NRTs within the time period specified by the USOE and the publisher of the test.

C. School districts/charter schools shall submit all answer sheets for the CRT and NRT tests to the CS Section of the USOE for scanning and scoring as follows:

(1) School districts/charter schools shall return CRT, UAA and DWA answer sheets to the USOE no later than five working days after the last day of the testing window.

(2) School districts/charter schools shall return NRT answer sheets to the USOE no later than five working days after the last day of the testing time period specified by the publisher of the test.

(3) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day.

(4) School districts/charter schools shall return UALPA answer sheets to the USOE no later than May 15 for traditional

schedule schools and June 15 for year-round schedule schools beginning with the 2007-08 school year.

D. When determining the date of testing, schools on trimester schedules shall schedule the testing at the point in the course where students have had approximately the same amount of instructional time as students on a regular schedule and provide the schedule to the USOE. Basic skills courses ending in the first trimester of the year shall be assessed with the previous year's form of the CRTs.

E. Makeup opportunities shall be provided to students for the Utah Basic Skills Competency Test according to the following:

(1) Students shall be allowed to participate in makeup tests if they did not participate to any degree in the Utah Basic Skills Competency Test or subtest(s) of the Utah Basic Skills Competency Test.

(2) School districts/charter schools shall determine acceptable reasons for student makeup eligibility which may include absence due to serious illness, absence due to family emergency, or absence due to death of family member or close friend.

(3) School districts/charter schools shall provide a makeup window not to exceed five days immediately following the last day of each administration of the Utah Basic Skills Competency Test.

(4) School districts/charter schools shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the Utah Basic Skills Competency Test.

R277-473-4. Security of Testing Materials.

A. All test questions and answers for all standardized tests required under Sections 53A-1-601 through 53A-1-611, shall be designated protected, consistent with Section 63-2-304(5), until released by the USOE. A student's individual answer sheet shall be available to parents under the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99).

B. The USOE shall maintain a record of all of the protected test materials sent to the school districts/charter schools.

C. Each school district/charter school shall maintain a record of the number of booklets of all protected test materials sent to each school in the district and charter school, and shall submit the record to USOE upon request.

D. Each school district/charter school shall ensure that all test materials are secured in an area where only authorized personnel have access, or are returned to USOE following testing as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form beyond the time period allowed for test administration.

E. Individual schools within a school district and charter schools shall secure or return paper test materials within three working days of the completion of testing. Electronic testing materials shall be secured between administrations of the test, and shall be removed from teacher and student access immediately following the final administration of the test.

F. The USOE shall ensure that all test materials sent to a school district/charter school are returned as required by USOE, and may periodically audit school districts/charter schools to confirm that test materials are properly accounted for and secured.

G. School district/charter school employees and school personnel may not copy or in any way reproduce protected test materials without the express permission of the specific test publisher, including the USOE.

R277-473-5. Format for Electronic Submission of Data.

A. CS shall communicate regularly with school districts/charter schools regarding required formats for electronic submission of any required data.

B. School districts/charter schools shall ensure that any computer software for maintaining school district/charter school data is, or can be made, compatible with CS requirements and shall report data as required by the USOE.

R277-473-6. Format for Submission of Answer Sheets and Other Materials.

A. The USOE shall provide a checklist to each school district/charter school with directions detailing the format in which answer documents are to be collected, reviewed, and returned to the USOE.

B. Each school district/charter school shall verify that all the requirements of the testing checklist have been met.

C. CRT data may be submitted in batches in cooperation with the assigned CS data technician.

R277-473-7. Timing for Return of Results to School Districts/Charter Schools.

A. Scanning and scoring shall occur in the order data is received from the school districts/charter schools.

B. Consistent with Utah law, raw test results from all CRTs shall be returned to the school before the end of the school year.

C. Each school district/charter school shall check all test results for each school within the district and charter school and for the school district as a whole, verify their accuracy with CS, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to school or school district data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence (e.g., school fire) that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

D. School districts/charter schools shall not release data until authorized to do so by the USOE.

R277-473-8. USOE and School Responsibilities for Crisis Indicators in State Assessments.

A. Students participating in state assessments may reveal intentions to harm themselves or others, that the student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. The USOE shall notify the school principal, counselor or other school or school district personnel who the USOE determines have legitimate educational interests, whenever the USOE determines, in its sole discretion, that a student answer indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant written text.

E. Using their best professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The text provided by USOE shall not be part of the student's record and the school shall destroy any copies of the text once the school or district personnel involved in resolution of the matter determine the text is no longer necessary. The school principal shall provide notice to the USOE of the date the text is destroyed.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of

potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

R277-473-9. Standardized Testing Rules and Professional Development Requirement.

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts/charter schools shall develop policies and procedures consistent with the law and Board rules for standardized test administration, make them available and provide training to all teachers and administrators who shall administer state tests.

C. At least once each school year, school districts/charter schools shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices.

D. School district/charter school assessment staff shall use the Testing Ethics Policy Power Point presentation and the Testing Ethics booklet developed by the USOE, available on the USOE Assessment homepage in providing training for all test administrators/proctors.

E. Each and every test administrator/proctor shall individually sign a Testing Ethics signature page also available on the USOE Assessment homepage.

F. All teachers and test administrators shall conduct test preparation, test administration, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district/charter school rules and policies, Board rules, and state application of federal requirements for funding.

G. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;

(2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(3) change, alter, or amend any student answer sheet or any other standardized test materials at any time in such a way as to alter the student's intended response;

(4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(5) violate any specific test administration procedure or guideline specified in the test administration manual, or violate any state or school district/charter school standardized testing policy or procedure;

(6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;

H. Violation of any of these rules may subject licensed educators to possible disciplinary action under Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(I).

KEY: educational testing
November 7, 2007 **Art X Sec 3**
Notice of Continuation May 9, 2005 **53A-1-603(3)**
53A-1-401(3)

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information;
(6) completion of employee background checks; and
(7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2006-07 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

L. "USOE" means Utah State Office of Education.

M. "Year" means both the school year and the fiscal year in Utah, which runs from July 1 through June 30.

N. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. January 24 - Adult Education - midyear report for current year.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;
(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 10, beginning with the 2007-08 school year (due July 15 for the 2006-07 school year)

(1) Bus Driver Credentials Report - for current year - Financial and Business Services;
(2) Classified Personnel Report - for prior year - Financial and Business Services;
(3) Data Clearinghouse File - final comprehensive update for prior year - Data Assessment, and Accountability;
(4) Driver Education Report - for prior year - Educator Quality;
(5) ESEA Choice and Supplemental Services Report - for prior year;
(6) Fee Waivers Report - for prior year;
(7) Fire Drill Compliance Statement - for prior year;
(8) Home Schooled Students Report - for prior year;
(9) Teacher Benefits Report - for prior year;
(10) Transportation - for prior year:
(a) Bus Inventory Report;
(b) Year End Transportation Statistics Report.

E. August 24 - Adult Education - final report for prior year.

F. September 15 - Membership Audit Report - for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;
(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year.
(2) YICSIS - update as of October 1 for current year.

I. November 1

(1) Data Clearinghouse File - optional revised final comprehensive update for prior year;
(2) Enrollment and Transfer Student Documentation Audit Report - for current year;
(3) Immunization Status Report - for current year;
(4) Transportation Statistics for state funding:
(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;
(b) Schedule B (Miscellaneous Expenditure Report) - for prior year.

J. November 15

(1) CACTUS - update for current year; and
(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report.

L. December 15 - Data Clearinghouse File - update as of December 1 for current year.

R277-484-4. Adjustments to Deadlines.

A. Deadlines that fall on a weekend, state holiday or Utah Education Association convention day in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance at the at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;
(2) The signatures of the LEA business administrator and the district superintendent or charter school director; and

(3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Data and Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 6 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

(1) June 29 CACTUS Update;

(2) July 10 Final Data Clearinghouse File - final comprehensive update for prior year beginning 2007-08 school year and July 15 for 2006-07 school year only - Data Assessment, and Accountability; and

(3) November 1 error corrected Data Clearinghouse File.

R277-484-5. Data Source for Accountability Reporting.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA; and

(3) submission of data files to the U.S. Department of Education via EDEN.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 7, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

R277-484-9. Disclosure of Data For Research.

A. The USOE may disclose confidential, personally identifiable information of students to organizations for research and analysis purposes to improve instruction in public schools. Any such disclosure shall be made only if the following requirements are met:

(1) the disclosure is in accordance with the federal Family Educational Rights and Privacy Act (FERPA), 34 CFR 99-31(a)(6; and

(2) the research being done has been commissioned by the Board. In some cases, as approved by the Board, personally identifiable data may be provide to the researcher/contractor but only in a secure manner.

B. Those not commissioned but desiring data shall use the publicly available data on the USOE websites or request the research data set provided by the USOE Computer Services Section. This standard, deidentified data set shall be developed each year and available upon request.

C. The recipient organization shall sign the USOE Confidentiality Agreement.

KEY: data standards, reports, deadlines
November 7, 2007 **Art X Sec 3**
53A-1-401(3)
53A-1-301(2)(e)

R277. Education, Administration.
R277-602. Special Needs Scholarships - Funding and Procedures.
R277-602-1. Definitions.

A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).

B. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

C. "Appeal" for purposes of the rule means an opportunity to discuss/contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

D. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

E. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

F. "Board" means the Utah State Board of Education.

G. "Days" means school days unless specifically designated otherwise in this rule.

H. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

I. "Eligible student" for purposes of this rule means:

(1) the student's parent resides in Utah;

(2) the student has a disability as designated in 53A-1a-704(2)(b); and

(3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.

J. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

K. "Final administrative action" for purposes of this rule means the concluding action under Section 53A-1a-701 through 53A-1a-710 and this rule.

L. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "Private school that has previously served students with disabilities" means a school that:

(1) has enrolled students within the last three years under the special needs scholarship program;

(2) has enrolled students within the last three years who have received special education services under Individual Services Plans (ISP from the school district where the school is geographically located; or

(3) can provide other evidence to the Board that is determinative of having enrolled students with disabilities within the last three years.

N. "Special Needs Scholarship Appeals Committee (Appeals Committee)" means a committee comprised of:

(1) the special needs scholarship coordinator;

(2) the USOE Special Education Director; and

(3) a Board-designated special education advocate.

O. "USOE" means the Utah State Office of Education.

P. "Warrant" means payment by check to a private school.

R277-602-2. 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, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, 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 outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online at www.usoe.org, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district in which the private school is geographically located (school district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on

the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall provide documentation of student's enrollment in an eligible private school as defined under Section 53A-1a-705;

(4) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions

(1) The parent of a special needs scholarship student whose application is received on or before July 1 shall be eligible for quarterly scholarship payments equal to no more than the amount established in Section 53A-1a-706(2), with payments beginning on September 1.

(2) The parent of a special needs scholarship student whose application is received after July 1, but on or before September 1 that shall be eligible for quarterly scholarship payments equal to no more than three-fourths of the amount established in Section 53A-1a-706(2), with payments beginning on November 1.

(3) The parent of a special needs scholarship student whose application is received after September 1, but on or before November 1 shall be eligible for quarterly scholarship payments equal to no more than one-half of the amount established in Section 53A-1a-706(2), with payments beginning on February 1.

(4) The parent of a special needs scholarship student whose application is received on or before February 15 shall be eligible for quarterly scholarship payments equal to no more than one-fourth of the amount established in Section 53A-1a-706(2), with payments beginning on April 15.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by July 1 in the second and third year to indicate the student's continued enrollment.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program. The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program. Further information is available at www.schools.utah.gov/admin/specialneeds.htm.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no later than April 1 prior to the school year in which admission is sought.

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53a-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks under Section 53A-3-410(2) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than May 30 of each year.

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than July 30 of each year.

E. The Board shall mail scholarships directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. Beginning with the 2006-07 school year, the Board may begin scholarship payments to eligible private schools no earlier than July 1 but before payment dates established by Section 53A-1a-706(5)(a) if the parent/guardian negotiates a payment date with the USOE, provides reasonable advance notice to the USOE and assumes responsibility for transmission of the payment from the USOE to the private school.

G. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-706(1)(c)(i).

H. The Board shall verify and cross-check with school districts or charter school special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by May 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

R277-602-7. Special Needs Scholarship Appeals.

A. A parent or legal guardian of an eligible student or a parent or legal guardian of a prospective eligible student may appeal any final administrative decision under this rule.

B. The Appeals Committee may not grant an appeal contrary to the statutory provisions of Section 53A-1a-701 through 53A-1a-710.

C. An appeal shall be submitted in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200.

(1) The appeal opportunity is expressly limited to a written appeal.

(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.

(3) Nothing in the appeals process established under R277-602-8 shall be construed to limit, replace or adversely affect parental appeal rights available under IDEA.

D. Appeals shall be made within 15 days of written notification of the final administrative decision.

E. Appeals shall be considered by the Appeals Committee within 15 days of receipt of the written appeal.

F. The decision of the Appeals Committee shall be transmitted to parents no more than ten days following consideration by the Appeals Committee.

G. Appeals shall be finalized as expeditiously as possible in the joint interest of schools and students involved.

H. The Appeals Committee's decision is the final administrative action.

KEY: special needs students, scholarships

July 11, 2006

Art X Sec 3
53A-1a-706(5)(b)
53A-3-410(6)(i)(c)
53A-1a-707
53A-1-401(3)

R305. Environmental Quality, Administration.
R305-2. Electronic Meeting.
R305-2-1. Purpose.

Section 52-4-7.8 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting meetings of the Department of Environmental Quality and the Boards established within the Department in accordance with Section 19-1-106.

R305-2-2. Authority.

This rule is established under the authority of Sections 19-1-201(2)(k) and 202(1)(a).

R305-2-3. Procedure.

The following provisions govern any meeting at which one or more Board members appear telephonically or electronically pursuant to Section 52-4-7.8.

(1) If one or more members of a Board may participate electronically or telephonically, public notice of the meeting shall so indicate. In addition the notice shall specify the anchor location where the members of the Board 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.

(2) 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 meeting.

(3) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board Member may participate in the meeting electronically or telephonically.

(4) When notice is given of the possibility of a Board member appearing electronically or telephonically, any board member may do so and shall be counted as present for the 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 a time as any Board member 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.

(5) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Environmental Quality, 160 North 1950 West, Salt Lake City, Utah 84116. The anchor location is the physical location from which the electronic meeting originates or from where the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, board meetings
November 8, 2002 19-1-201(2)(k)
Notice of Continuation November 28, 2007 19-1-202(1)(a)

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential

to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants, furnace process;
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a

standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:

(i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and

(ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to

those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in

compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen

oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All

instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment

(including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for

any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification

requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in

the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the

source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within

such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee

on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, environmental protection, operating permit, emission fees
November 9, 2007 19-2-109.1
Notice of Continuation July 13, 2007 19-2-104

R380. Health, Administration.
R380-50. Local Health Department Funding Allocation Formula.
R380-50-1. Authority and Purpose.

(1) This rule is being promulgated under the authority of Section 26A-1-116, which directs the Utah Department of Health to establish by rule a formula for allocating funds by contract to local health departments.

(2) This rule specifies the formula for allocating state-appropriated funds to local health departments by contract.

R380-50-2. Definitions.

(1) "Contract" means the Public Health Services Contract between the Utah Department of Health and the local health departments through which state block grant funds are distributed.

(2) "District Incentive" means funds allocated to local health departments to encourage them to form and maintain multi-county health departments.

(3) "Funds" means the State General Funds allocated by the Legislature to the Utah Department of Health for distribution to local health departments by contract.

(4) "Local Health Department" means a local health department established under Section 26A-1-102(5).

(5) "Total Poverty Population" means the population in a county that is living below the poverty level established by the United States Government Census Bureau reported by Utah Job Service.

(6) "Total State Population" means the population figures by county as provided by the State Office of Planning and Budget.

R380-50-3. Allocation Procedures.

(1) By a three-fourths vote of its members, the Utah Association of Local Health Officers may, in cooperation with and subject to the approval of the Department of Health, allocate a portion of the funds as necessary to support basic public health programs within every local health department that benefit and are available to all residents of the state. In allocating this portion, no local health department may receive less than it received in the prior year, except for years in which the state funding is decreased.

(2) The Utah Department of Health finds that population is not the sole relevant factor in determining need and adopts the following formula pursuant to Section 26A-1-116 for allocating to local health departments the funds that remain after the allocation in Subsection R380-50-3(1):

(a) District Incentive Factor: local health departments consisting of at least two counties shall receive 25.29% in accordance with the number of counties within the geographical boundaries of the local health department as follows:

(i) Local health departments with two counties shall receive 10.34% of this amount.

(ii) Local health departments with three counties shall receive 13.79% of this amount.

(iii) Local health departments with four counties shall receive 17.24% of this amount.

(iv) Local health departments with five counties shall receive 20.69% of this amount.

(v) Local health departments with six counties shall receive 24.14% of this amount.

(b) Population Factor: local health departments shall receive 28.04% according to the percentage of the total state population living within the geographical boundaries of the local health department.

(c) Poverty Population Factor: local health departments shall receive 23.34% according to the percentage of the total poverty population of the state living within the geographical boundaries of each local health department.

d. Square Mile Factor: local health departments shall receive 23.33% according to the percentage of the total square miles in the state lying within the geographical jurisdiction of each local health department.

KEY: health, local government, funding formula*
1993 26A-1-116
Notice of Continuation November 26, 2007

R380. Health, Administration.
R380-300. Community Spay and Neuter Grants.
R380-300-1. Authority and Purpose.

(1) This rule provides the requirements and procedures for community spay and neuter grants established by Title 26, Chapter 48 and defines what constitutes a person having low income for purposes of that statute.

(2) It is authorized by Section 26-48-102 (5)(c).

R380-300-2. Definitions.

The definitions as they appear in Section 26-48-102 (4) apply. In addition, "Department" means the Utah Department of Health.

R380-300-3. Grant Application.

An applicant responding to a request for grant application under this program shall submit its application as directed in the grant application guidance issued by the Department. An applicant organization shall submit an annual report for the organization as a whole which shall provide for the most current year end:

(1) IRS form 990 for non-profit corporation qualified under I.R.C. Section 501 (c)(3);

(2) a statement of assets, liabilities and fund balance;

(3) a statement of operations showing by summary, sources of revenue and expenditures;

(4) a statement of mission or purpose and how the organization has met its objectives; and

(5) a list of directors and key administrators who are in control of the organization.

R380-300-4. Criteria for Awarding Grants.

In awarding grants, the Department shall consider the extent to which the applicant:

(1) demonstrates that it meets organization criteria in Section 26-48-102 (4);

(2) demonstrates that it will provide spay and neuter services for cats and dogs belonging to a low-income person as required in Section 26-48-102 (4);

(3) provides:

(a) information that requirements established in Section 26-48-102 (5) are met;

(b) an organization operation plan with a statement of specific measurable objectives and methods to be used to assess the achievement of those objectives;

(c) a schedule of fees the voucher shall cover; and

(d) the number of estimated animal procedures to be provided with the grant award.

R380-300-5. Qualified Service Recipient.

(1) A low-income person qualifies under poverty standards established by the applicant organization using the 200 percent of federal poverty level standard. Acceptable proof may be any of the following:

(a) Medicaid enrollment documentation;
(b) CHIP enrollment documentation;
(c) Food Stamps eligibility documentation;
(d) WIC enrollment documentation;
(e) Social Security Disability (SSD);
(f) HUD Section 8 eligibility documentation; or
(g) prior year's income tax return.

(2) The grantee must assure that each individual to whom it provides service under the grant awarded under this rule meets the requirements of this rule and Section 26-48- 102 (5).

R380-300-6. Annual Report Requirements.

(1) The grant recipient shall provide an annual report as provided in R380-300-3 above.

(2) The recipient organization shall provide supplementary information related to the mobile spay and neuter services described in the grant application, including a break down by county of:

(a) the number of cats neutered or spayed and an estimated cost per animal; and

(b) the number of dogs neutered or spayed and an estimated cost per animal.

(3) An organization that receives state funds under Section 26-48-102 must submit to the Department of Health, Fiscal Operations, an annual accounting of the grant funds including:

(a) the number of vouchers distributed to pet owners for spay and neuter services;

(b) the number of vouchers redeemed for services;

(c) a summary of total cost of voucher services provided; and

(d) an average cost per animal.

R380-300-7. Audit Provisions.

An organization that receives state funds under Section 26-48-102 must submit, upon request, to a Department audit of the recipients' compliance with the terms of the grant.

KEY: spay, neuter, pets, grants
November 7, 2007 26-48-102 (5)©

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-2A. Inpatient Hospital Services.
R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness requires 24 hours or more of continuous care in a hospital.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a hospital facility in which the hyperbaric unit is accredited as a level one facility by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by R414-10, Physician Services.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The

DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.

(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, the Department may review and evaluate both claims to determine if, based on severity of illness and intensity of service, the claims should be combined into a single DRG payment or paid separately. Cost effectiveness may also be part of this determination but is not a primary factor.

(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:

(a) pregnancy;

(b) chemotherapy; and

(c) hyperbilirubinemia appearing in newborn infants within the first week of life.

(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(8) If an observation stay meets the intensity and severity for inpatient hospitalization and exceeds 24 hours, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

KEY: Medicaid
June 26, 2007 **26-1-5**
Notice of Continuation November 8, 2007 **26-18-3**
26-18-3.5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.

(2) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for children under the age of 21.

(3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(6) "Outpatient" means professional services provided for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight.

(7) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-3A-3. Client Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-3A-4. Program Access Requrements.

(1) The Department reimburses for outpatient hospital services and supplies only if they are:

(a) furnished in a hospital;

(b) provided by hospital personnel by or under the direction of a physician or dentist;

(c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.

(2) All outpatient hospital services are subject to review by the Department.

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a hospital facility in which the hyberbaric unit is accredited as a level one facility by the Undersea and Hyperbaric Medical Society.

(11) Lithotripsy is covered by an all-inclusive fixed fee. This payment covers all hospital and ambulatory surgery-related services for lithotripsy on the same kidney for 90 days, including repeat treatments. Lithotripsy for treatment of the other kidney is a separate service.

(12) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services as described in the provider manual. The diagnosis reflecting the primary reason for emergency services must be used and must be one of the first five diagnoses listed on the claim form.

(13) Take home supplies and durable medical equipment are not reimbursable.

(14) Prescriptions are not a covered Medicaid service for a client with the designation "Emergency Services Only Program" printed on the Medicaid Identification Card.

R414-3A-7. Prior Authorization.

Prior authorization must be obtained on certain medical and surgical procedures in accordance with R414-1-14.

R414-3A-8. Copayment Policy.

Each Medicaid client is responsible for a copayment as established in the Utah State Medicaid Plan and incorporated by reference in R414-1.

R414-3A-9. Reimbursement for Services.

(1) Except for emergency room, lithotripsy, laboratory and radiology services, the payment level for outpatient hospital claims is based on 77% of allowed charges for urban hospitals

and 93% of allowed charges for rural hospitals.

(2) Payments for emergency room services vary depending on urban and rural designation and whether the service is designed as "emergency" or "non-emergency." The "emergency" designation is based on the principal diagnosis according to ICD-9 Code. Rural hospitals receive 98% of charges for emergency services and 65% for non-emergency use of the emergency room. Urban hospitals receive 98% of charges for emergencies and 40% of charges for non-emergency use of the emergency room.

(3) Payment for laboratory and radiology services provided in a hospital to outpatients is based on HCPCS codes and an established fee schedule, unless a lesser amount is billed. The fee schedule used to pay physicians is used to establish payment rates.

(4) Billed charges shall not exceed the usual and customary charge to private pay patients.

(5) Payments for all outpatient services are limited to the aggregate annual amount Medicare would pay for the same services as required by 42 CFR 447.321.

KEY: Medicaid
June 26, 2007 **26-1-5**
Notice of Continuation November 8, 2007 **26-18-2.3**
26-18-3(2)
26-18-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

(1) Aged;
(2) Blind;
(3) Disabled;
(4) Family;
(5) Institutional;
(6) Transitional;
(7) Child;
(8) Refugee;
(9) Prenatal and Newborn;
(10) Pregnant Women;
(11) Community Supports Waiver for Home and Community Based Services;
(12) Aging Home and Community Based Services Waiver;
(13) Technologically Dependent Child Waiver/Travis C. Waiver;
(14) Brain Injury Home and Community Based Services Waiver;
(15) Physical Disabilities Waiver; and
(16) Cancer Program.

R414-303-2. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.

(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541, 2001 ed., which are incorporated by reference. The Department provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2002 ed., which is incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2001, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind. If the client has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(a) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(b) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(c) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(d) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process.

(a) The individual may provide the Department additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department shall notify the individual of its decision upon reconsideration. Thereafter, the individual may choose to pursue or abandon his fair hearing rights.

(5) If the Department denies an individual's Medicaid application because it or SSA has determined that the individual is not disabled and that determination is later reversed on appeal and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.

(a) Eligibility cannot begin any earlier than the date of disability onset or the date that is three months before the date of application as defined in R414-306-4(2), whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past or current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown to receive coverage, the spenddown must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2001, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2001, for a given year, or as subsequently authorized by Congress. Applicants will be

denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) $90 will be deducted from the monthly gross earned income for each employed person.

(iii) The $30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be $200.00 per child under age two, and $175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is $160.00 per child under age two, and $140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative?s household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-5. 12 Month Transitional Family Medicaid.

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2).

R414-303-6. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-7. Foster Care and Independent Foster Care Adolescents.

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-8. Subsidized Adoptions.

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-9. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-10. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, 2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Prenatal and Newborn Medicaid.

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47), 1902(e)(4) and (5) and 1902(l), in effect January 1, 2005, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid, the agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Prenatal Medicaid whose countable resources exceed $5,000 must pay four percent of countable resources to the agency to receive Prenatal Medicaid. The maximum payment amount is $3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2005.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(11) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(12) Children may qualify for the newborn program through the month in which they turn 19.

(13) A child who is 18 but not yet 19 and meets the criteria under 1902(l)(1)(D) cannot be made ineligible for coverage under the Newborn program because of deeming income or assets from a parent, even if the child lives in the parent's home.

R414-303-12. Pregnant Women Medicaid.

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

R414-303-13. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-14. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can

continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to $125.

R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-17. Physical Disabilities Waiver.

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver or nursing home services.

R414-303-18. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups, independent foster care adolescent

November 21, 2007 26-18-3

Notice of Continuation January 31, 2003 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-502. Nursing Facility Levels of Care.
R414-502-1. Introduction and Authority.

This rule defines the levels of care provided in nursing facilities.

R414-502-2. Definitions.

The definitions in R414-1-1 and R414-501-2 apply to this rule.

R414-502-3. Approval of Level of Care.

(1) In determining whether the applicant has mental or physical conditions that can only be cared for in a nursing facility, or equivalent care provided through an alternative Medicaid health care delivery program, the department shall document that at least two of the following factors exist:

(a) Due to diagnosed medical conditions, the applicant requires at least substantial physical assistance with activities of daily living above the level of verbal prompting, supervising, or setting up;

(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through an alternative Medicaid health care delivery program; or

(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of an alternative Medicaid health care delivery program.

(2) The department shall assign a level of care based upon the severity of illness, intensity of service needed, anticipated outcome, and setting for the service. The department shall not assign a more intense level of care if, as a practical matter, the applicant's care and treatment needs can be met at a less intense level of care. Levels of care, ranked in order of intensity from the least intense to the most intense, are:

(a) nursing facility III care;
(b) nursing facility II care;
(c) nursing facility I care; and
(d) intensive skilled care.

R414-502-4. Criteria for Nursing Facility III Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility III care level:

(1) A physical examination was completed within 30 days before or seven days after admission;

(2) A registered nurse completed, coordinated, and certified a comprehensive resident assessment;

(3) A person licensed as a social worker, or higher degree of training and licensure, completed a social services evaluation that meets the criteria in 42 CFR 456.370;

(4) A physician established a written plan of care;

(5) All less restrictive alternatives or services to prevent or defer nursing facility care have been explored; and

(6) When the department has determined necessary, health care professionals completed and submitted to the department a psychological or psychiatric evaluation in accordance with 42 CFR 483.20(f). If an applicant is diagnosed with a condition related to a code within the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM) psychiatric code range, the inter-disciplinary team shall submit its determinations to the department, including the behavior intervention program if the team determined one to be necessary. If the team determined that behavior intervention is unnecessary, it shall include evidence supporting the determination. All behavior intervention programs shall:

(a) be a precisely planned systematic application of the methods and experimental findings of behavioral science with the intent of reducing observable negative behaviors;

(b) incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(c) be conducted only following identification and, if feasible, remediation of environmental and social factors that are likely to be precipitating or reinforcing the inappropriate behavior;

(d) incorporate a process for identifying and reinforcing a desirable replacement behavior;

(e) include a program data sheet;

(f) include a behavior baseline profile consisting of all of the following: the applicant's name; the date, time, location, and specific description of the undesirable behavior exhibited; the persons present and the conditions existing prior to and at the time of the undesirable behavior; the interventions used and their results; and the recommendations for future action; and

(g) include a behavior intervention plan consisting of all of the following: the applicant's name; the date the plan is prepared and when it will be used; the objectives stated in terms of specific behaviors; the names, titles, and signatures of the persons responsible for conducting the plan; and the methods and frequency of data collection and review.

R414-502-5. Criteria for Nursing Facility II Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility II care level:

(1) The applicant meets all the criteria for nursing facility III care;

(2) The required intensity of services needed is less than that for skilled care; and

(3) The applicant has documented service needs for at least one of the following:

(a) Daily rehabilitative or restorative services provided under the direction of licensed professional staff, with documented measurable outcomes of treatment;

(b) Close observation, documentation, and follow-through to establish the impact of specified services, such as services to applicants with neurological involvement, hospice services, diabetes control, or dialysis, any one of which may utilize laboratory services and physician intervention;

(c) Training in personal care services to minimize dependency on staff for completion of activities of daily living;

(d) A behavior intervention program established because of specified aberrant behavior such as wandering, excessive sexual drive, destructive or aberrant acting out, prolonged depression leading to self-isolation or violent acts;

(e) Specialized nursing services for skin and wound care;

(f) Extensive interaction with professional staff to assist the applicant and family through the final three months of his anticipated life expectancy;

(g) Any skilled services ordered and given more frequently than two times each week, but less frequently than required for skilled care;

(h) Alzheimer's disease, senile dementia, organic brain disorder, and other diagnosed disease processes that use specialized documented programs that increase staff intervention in an effort to enhance the applicant's quality of life and functional and cognitive status;

(i) Multi-drug resistant, non-compliant tuberculosis applicants in the active phases of tuberculosis who are court ordered as a public health or communicable disease placement; or

(j) A diagnosis of mental retardation with a Level II determination indicating that the applicant can benefit from specialized rehabilitative services. The department shall pay a provider for services provided for an applicant in this category

an individual add-on rate depending on the specialized rehabilitative services provided to meet his needs.

R414-502-6. Criteria for Nursing Facility I Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility I care level:

(1) The applicant meets all the criteria for nursing facility II care;

(2) The services are provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the federal Health Care Financing Administration to furnish nursing facility I care in the Medicare program;

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;

(4) The applicant requires specialized and complex care documented in the applicant's medical record; and

(5) The criteria in 42 CFR 409.31 through 409.35, requirements for coverage of post-hospital skilled nursing facility care, are satisfied.

R414-502-7. Criteria for Intensive Skilled Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant for intensive skilled care:

(1) The applicant meets all the criteria for nursing facility I care. However, the following routine skilled care does not qualify as intensive skilled care under R414-502-6(5) in making a determination under this section:

(a) skilled nursing services described in 42 CFR 409.33(b);

(b) skilled rehabilitation services described in 42 CFR 409.33(c);

(c) routine monitoring of medical gases after a therapy regimen;

(d) routine levin tube and gastrostomy feedings; and

(e) routine isolation room and techniques.

(2) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;

(3) The applicant requires and receives at least five hours daily of direct licensed professional nursing care, including a combination of specialized care and services, and assessment by a registered nurse and observation on a 24-hour basis;

(4) The attending physician has made any one of the following determinations:

(a) there is presently no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility;

(b) the applicant's condition requires physician follow-up at the nursing facility at least once every 30 days; or

(5) An interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential;

(6) Except in extraordinary circumstances, the applicant has been hospitalized immediately prior to admission to the nursing facility;

(7) The applicant has been continuously approved for skilled care, either through Medicare or Medicaid, since admission to the nursing facility;

(8) The attending physician has written and signed progress notes at the time of each physician visit reflecting the current medical condition of the applicant; and

(9) If an applicant was previously approved for intensive skilled care and later downgraded to a lower care level, then, even though he was not discharged from a hospital, he may return to intensive skilled care instead of being hospitalized in an acute care setting if:

(a) a complication occurs involving the condition for which he was originally approved for intensive skilled care; and

(b) it has been less than 30 days since the termination of the previous intensive skilled care.

R414-502-8. Criteria for Intermediate Care for the Mentally Retarded.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant in an intermediate care facility for the mentally retarded:

(1) The applicant is mentally retarded, except that even if the applicant is mentally retarded, he will not qualify for care in an intermediate care facility for the mentally retarded if the applicant is ambulatory, continent, only moderately or mildly mentally retarded without complicating conditions, is in need of less than weekly intervention by or under the supervision of a health care professional or trained habilitative personnel, and is capable of daily attendance in work settings or day treatment. Day treatment is training and habilitation services outside the nursing facility that are:

(a) intended to aid the self-help and self-sufficiency skill development of a mentally retarded resident;

(b) sufficient to meet the specialized rehabilitative service requirements of 42 CFR 435.1009 for the mentally retarded; and

(c) coordinated with the active treatment program of the intermediate care facility for the mentally retarded.

(2) The applicant has at least one of the following conditions:

(a) Is severely or profoundly retarded;

(b) Is under six years of age;

(c) Is severely multiply handicapped in that he has at least two of the conditions identified in the definition of mental retardation found in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994;

(d) More than once per week is physically aggressive or assaultive towards himself or others;

(e) Is a security risk or wanders away at least once per week;

(f) Is diagnosed as severely hyperactive;

(g) Demonstrates psychotic-like behavior; or

(h) Has conditions requiring at least weekly intervention by or under the supervision of a health care professional or trained habilitative personnel.

KEY: Medicaid

November 15, 2007 26-1-5
Notice of Continuation August 27, 2004 26-18-3
63-46a-7(1)(a)

R432. Health, Health Systems Improvement, Licensing.
R432-31. Transferable Physician Order for Life-Sustaining Treatment.
R432-31-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-31-2. Purpose.

This rule provides for the orderly communication and transfer of physician orders that outline individual preferences for life-sustaining treatment when an individual transfers from one licensed health care facility to another.

R432-31-3. Definitions.

"Advance directive" means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law relating to the provision of health care when an individual is incapacitated.

R432-31-4. Transferable Physician Order.

(1) A physician may enter a individual's preferences and the physician's orders for life- sustaining treatment on a transferable physician order form. The Department shall, in consultation with the Health Facility Committee, design a uniform transferable physician order for life-sustaining treatment form that may be used by physicians and health care facilities.

(2) Upon admission to a health care facility or acceptance to a home health agency, the facility or agency shall make a good faith effort to determine whether the individual's physician has completed a transferable physician order for life-sustaining treatment.

(a) Health care facilities shall inform each individual, or if the individual does not have the capacity to act, the individual's family or legal representative, about transferable physician orders for life-sustaining treatment in the same manner as required for providing information about advance directives.

(b) The facility shall offer each individual an opportunity to complete a transferable physician order for life-sustaining treatment upon admission to the facility.

(c) The facility shall place the transferable physician order for life-sustaining treatment in a prominent part of the individual's current medical record.

(3) A physician or licensed practitioner, as defined in R432-1-3(69), must sign the transferable physician order for life sustaining treatment.

(4) A health care facility or its employee that makes a good faith effort to follow the instructions in a transferable physician order for life-sustaining treatment is not subject to any Department sanction as a result of those good faith efforts.

(5) The facility shall review the transferable physician order for life-sustaining treatment with the individual, or if the individual does not have the capacity to act, the individual's family or legal representative, when any of the following occur:

(a) there is a substantial, permanent change in the individual's health status;

(b) the individual is transferred from one care setting to another; and

(c) the individual's treatment preferences change.

(6) The transferable physician order for life-sustaining treatment is fully transferable between all licensed health care facilities.

(7) A transferring licensed health care facility shall send the physician order for life-sustaining treatment, if it exists, with the individual to the receiving facility. The receiving facility and health care providers at the receiving facility shall honor the physician order for life-sustaining treatment until it has been properly changed or voided.

KEY: health facilities

April 13, 2006 **26-21**
Notice of Continuation November 21, 2007

R432. Health, Health Systems Improvement, Licensing.
R432-40. Long-Term Care Facility Immunizations.
R432-40-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-40-2. Purpose.

Influenza and pneumococcal immunizations are recommended for persons aged 65 years and older and for persons of any age who have medical conditions that place them at high risk for complications of influenza. The purpose of this rule is to require long term care facilities to have policies and procedures in place to protect vulnerable patients and residents from vaccine preventable illnesses.

R432-40-3. Definitions.

As used in this rule:

"Long-term care facility" means a nursing care facility, small health care facility, assisted living type I and type II, intermediate care facility for the mentally retarded, and swing bed unit of a general acute care hospital

"Pneumococcal immunization" means an immunization using the 23-valent pneumococcal polysaccharide vaccine (PPV23).

R432-40-4. Policy and Procedures.

Each long-term health care facility shall implement written policies and procedures that include:

(1) a comprehensive assessment and immunization program for residents and employees;

(2) how and when to provide the influenza and pneumococcal immunizations;

(3) standing orders from a qualified health care practioner to ensure residents obtain influenza and pneumococcal immunizations;

(4) collection and recording of resident-specific immunization history information for each resident admitted to the facility;

R432-40-5. Immunization Offer and Exemptions.

(1) Each long-term health care facility shall make available to all employees an influenza immunization during the recommended vaccine season. The facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization under their existing health plan coverage. If the employee does not have health plan coverage for influenza immunization, then the facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization at a cost to the employee that is at or below that charged by their local health department.

(2) Each long-term health care facility shall document circumstances beyond its control that prevent it from providing immunizations, such as non-availability of vaccine. If the facility is unable to obtain the necessary vaccines, it shall provide documentation and request an alternative plan from the local health department or Utah Department of Health.

(3) The following are exempt from influenza and pneumococcal immunizations:

(a) a resident, or the resident's responsible person if the resident is unable to act for himself, who has refused the immunization(s) after having been given the opportunity to be immunized and;

(b) an employee who has refused the immunization(s) after having been given the opportunity to be immunized;

(c) a resident or employee who has a condition contraindicated for immunization according to the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practice (ACIP) recommendations for influenza vaccine or for pneumococcal vaccine.

(2) For each resident and employees who is not immunized, the facility shall document in the resident's or employee's respective files the reason for not becoming immunized. The long-term care facility shall annually make influenza and pneumococcal immunizations available to all residents and employees who have claimed an exemption. The long-term care facility shall document each refusal to receive and medical contraindication to influenza and pneumococcal immunizations.

R432-40-6. Reporting of Data.

By January 31 of each year, each long-term care facility shall report to the Utah Department of Health the number of residents who have received influenza and pneumococcal immunizations from May 1 to December 31 of the prior year, even if the resident is no longer in the facility.

R432-40-7. Civil Money Penalty.

The Department may assess up to a $500 civil money penalty for failure to maintain and report annual immunization data to the Utah Department of Health, Immunization Program, by January of each year. The Department may assess up to a $100 civil money penalty per resident or employee who, for reasons under the control of the facility, does not obtain an appropriate immunization(s) or if the facility does not have documentation of a refusal or medical contraindication.

KEY: health facilities, vaccination
December 19, 2002 26-21
Notice of Continuation November 21, 2007

R432. Health, Health Systems Improvement, Licensing.
R432-151. Mental Disease Facility.
R432-151-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-151-2. Purpose.

The purpose of the rule is to establish program standards for a mental disease facility (MDF) that is engaged primarily in providing diagnosis, treatment or care of persons with mental disease, including medical attention, nursing care and related services.

R432-151-3. General Provisions.

(1) R432-150 also applies to a Mental Disease Facility.

(2) The Department shall consider the following to determine whether a facility is an MDF:

(a) The facility specializes in providing psychiatric care and treatment, with emphasis on active treatment programs which focus on mental disease.

(b) Fifty per cent or more of the residents in the facility have a diagnosis of mental disease (using the ICD-9-CM codes) excluding the following:

(i) 290 through 294.9 and 310 through 310.9 for senility or organic brain syndrome;

(ii) 317 through 319 for mental retardation;

(iii) 314 through 315.9 for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons; and

(iv) 309 and 316 for Adjustment Reaction or Psychic factors associated with disease classified elsewhere.

(3) A facility that is determined to be an MDF according to this rule must be licensed as a mental disease facility.

(4) When a facility census identifies 40 per cent or more of the resident population with a mental disease diagnosis, the Department may request the facility to submit a completed Utah Level of Care Survey (ULOCS).

R432-151-4. Definitions.

(1) See common definitions in rule R432-1-3.

(2) Special definitions.

(a) "Utah Level of Care Scale" means the results of an empirical, validated assessment of resident level of function using the Utah Level of Care Survey instrument.

(b) "Utah Level of Care Survey" means a survey which includes a set of behavioral observations that provide a cross-sectional profile of resident functional deficits and care needs. The scale defines six service pattern types which reflect simultaneous consideration of physical and psychosocial care needs.

R432-151-5. Treatment Programs.

The facility shall develop and maintain standards through written policies and procedures for staff participation and for resident services.

(1) Goals, objectives, and available programs for treatment of mental disease shall be developed in such a manner that performance and effectiveness can be measured.

(2) These standards shall comply with the rules and shall encourage both quality of care and quality of life.

R432-151-6. Program Standards.

(1) Each resident shall receive individualized treatment, which includes at least the following:

(a) Provision of treatment services, regardless of the source(s) of financial support;

(b) Provision of services in the least restrictive environment possible;

(c) Provision of an individualized resident care plan which has regular periodic review;

(d) Invitation for active participation by residents and their responsible parent, relative, friend, or guardian in the development of resident care plans;

(e) Competent, qualified, and experienced professional staff to implement and supervise the resident care plan.

(2) The facility shall develop policies to assure that services are provided with sufficient resources (such as program funds, staff, equipment, supplies, and space) to meet resident needs.

(3) The facility shall maintain programs, beds, and services that are available 24 hours a day, seven days a week.

(4) Written policies and procedures shall define what action is to be taken when maladaptive behavior exceeds criteria for program participation.

(5) Services not directly provided within the facility must have written agreements or arrangements to obtain such services whenever they are authorized or prescribed. Such services may include special assessments or therapeutic treatment programs.

(6) The facility shall establish written policies and procedures which include:

(a) Admission criteria which describe selection of the population served, including age groups and other relevant characteristics;

(b) The intake process;

(c) Criteria for resident participation in programs;

(d) Specific treatment modalities;

(i) Identify services provided in the modality; and

(ii) Identify goals and objectives of the modality;

(e) Crisis intervention and emergency services;

(f) Use of involuntary medication or physical restraints;

(g) Restrictive procedures;

(h) Methods to collect, process, report, and disseminate resident assessment data;

(i) Case coordination and case management;

(j) Development and periodic review of plans of treatment;

(k) Discharge planning;

(l) Staff in-service needs;

(m) Responsibility for medical and dental care;

(n) Provisions for family participation in the treatment program;

(o) Arrangements for clothing, allowances, and gifts;

(p) Provisions to allow resident departure from the facility as part of activities offered in the program;

(q) When the resident leaves the facility against medical advice.

(7) The facility shall develop job descriptions to delineate the roles and responsibilities of team members and to establish supervisory and organizational relationships.

(8) The professional staff shall determine qualifications required to assume specific responsibilities. Individual personnel files shall contain documentation to verify whether health care staff meet state and local requirements for certificates, licenses, or registrations.

(9) There shall be a written and dated consent form signed by the resident or the resident's legal guardian for the use of, participation in, or performance of the following:

(a) Surgical procedures;

(b) Procedures that place the resident at risk;

(c) Transfer;

(d) Other procedures where consent is required by law.

(10) The resident shall be allowed visitors, regardless of age, unless such visits are clinically contraindicated, and if so, the reasons must be documented by the professionals who made this decision.

(11) Areas shall be provided for residents to visit in private, unless such privacy is contraindicated and documented in the resident's record and plan of treatment.

R432-151-7. Environment.

(1) Each facility shall establish an environment to enhance a positive self-image of residents and preserve individual dignity.

(a) Programs which assume responsibility for security and yet maintain an open-door policy are encouraged.

(b) Treatment programs shall be conducted without disruption of, or disturbance to, other facility programs.

(2) The facility shall be designed, constructed, equipped, and operated to promote efficient and effective conduct of treatment programs and to protect health and safety both for the residents served and for the staff.

(3) The facility shall meet environmental needs of the residents.

(4) The facility shall provide adequate space for the program to carry out its goals.

(a) When resident needs or program goals include outdoor activity, areas and facilities shall be provided.

(i) Natural terrain and community resources may provide options for outdoor activities.

(ii) Other areas appropriate to resident activities may include an auditorium, stage, swimming pool, canteen, etc. (iii) Activities may take place within the community setting in affiliation with churches, schools, organizations, etc.

(b) Content of program plans shall describe circumstances for use of available resources, and when necessary, have written affiliation agreements.

(c) Recreational equipment must be maintained in working order.

(5) Design, location, and furnishings of program areas shall accommodate residents and visitors. The need for privacy or support from staff as well as goals of the facility programs shall be taken into consideration.

(6) Clocks and calendars shall be provided to promote awareness of time and season.

(7) Books, current magazines, and daily newspapers shall be available to the residents.

(8) Areas shall be available for a range of social activities from two-person conversations to group activities. Areas shall also be available where a resident can be alone when this is not in conflict with the individual's treatment program.

(9) Noise-producing equipment and appliances shall not interfere with other activities or the therapeutic program. Written policies and procedures shall address the use and location of this equipment such as radios, televisions, record players, musical instruments, tape players, etc.

(10) Space and general equipment shall be provided for table games and pursuit of individual hobbies.

(a) Equipment and games shall be accessible to residents.

(b) Hobby supplies, as well as arts and crafts materials used in therapeutic activity, shall be available according to residents' cultural or educational backgrounds and needs under the management of Activity Services.

(11) Dining areas shall be pleasant and promote a congenial, relaxed atmosphere.

(a) Dining rooms shall be supervised during meals by staff personnel to provide assistance and to ensure that each resident receives adequate amounts and varieties of foods.

(b) Food shall be served in an attractive and appetizing manner, as planned in menus, and at realistic mealtimes.

(c) Menus shall provide color and variety in meeting nutritional needs.

(d) Provisions shall be made in the menus and dining areas to cover special occasions, holidays, and weekends.

(e) The facility shall make available an area which allows resident access for preparation and serving of food, beverages, or snacks. Facility policy shall establish guidelines for resident use, such as leisure time activity, or, to offer rehabilitation or habilitation in a therapeutic environment.

(f) Bedrooms shall be assigned on the basis of the resident's need for group support, privacy, or independence.

(i) Rooms shall have doors for privacy, and an appropriate bed with mattress, pillow, fresh linens, and blankets furnished by the facility.

(ii) There shall be closet or storage space for personal items and clothing which the resident has and shall be allowed to use or wear.

(iii) The selection of residents assigned to a room shall be appropriate to the ages, development, and needs of the resident and to the goals of the program.

(iv) When rooms are shared, individual privacy must be provided by curtains, by partitions or by furniture arrangement.

(v) Provision shall be made for residents who need extra sleep, who have sleep disturbances, or who need greater privacy.

(g) Residents shall be encouraged to maintain their sleeping and living areas and perform other day-to-day housekeeping activities to support non-impaired functioning, or to learn rehabilitation or habilitation responsibilities. Staff assistance and equipment shall be provided as needed.

(h) Residents shall be allowed to keep and display personal belongings and to add personal decorations to their rooms. The facility shall have written policies to govern use of decorative displays.

(i) Grooming and personal hygiene articles shall be readily accessible and shall be appropriate to the age, behavior, and clinical status of the resident.

(i) If access to potentially dangerous grooming aids or other personal items is contraindicated, a resident's personal articles may be kept under lock and key by the staff.

(ii) The professional staff must explain to the resident the conditions under which the articles may be used.

(iii) The treatment plan must also incorporate such restrictions and use.

(j) Good standards for grooming and personal hygiene including bathing, oral hygiene, care of hair and nails, and toilet habits shall be taught or maintained. Individual resident goals shall be written in the plans of treatment.

(k) Clothing shall be appropriate.

(i) Clothing shall be in good repair, of proper size, suited to the climate, and similar to clothing worn in the community.

(ii) Training and assistance in the selection and proper care of clothing shall be available as needed.

(iii) Training goals must be incorporated into the resident care plan.

(iv) An adequate amount of clothing shall be available to permit laundering, cleaning, and repair.

(l) Toilet and bathing facilities shall afford privacy with doors, toilet seats, partitions, and shower curtains.

(m) There shall be opportunity to participate in social events with persons of the opposite sex under adequate supervision.

(n) The resident shall retain possession of personal items such as tobacco products, cosmetics, watches, appliances, and money, except where possession may be restricted in the resident care plan.

(o) The resident shall have access to a personal funds account maintained by the business office or as specified by facility policy. Personal resource funds which a resident may have should be kept in this account.

R432-151-8. Construction and Physical Environment.

Refer to R432-5, Nursing Facility Construction.

R432-151-9. Administration and Organization.

(1) Program Director.

(a) The program director shall be a qualified health professional with a minimum of one year's experience in an established program for treatment of mental disease.

(b) The program director shall have a degree in administration, psychology, social work, nursing, or medicine and be licensed, certified or registered by the Utah Department of Commerce.

(c) The program director shall be appointed in writing by the governing body, and shall be accountable for the overall function of the program.

(d) The program director shall be accountable, whether by performance or by delegation, for the following functions:

(i) Develop written short-term and long-term goals for the treatment program;

(ii) Develop written policy and procedures, review them at least annually, and revise as necessary. Dates of review shall be documented;

(iii) Utilize quality assurance methods to assess efficiency and effectiveness of the program;

(iv) Supervise the development and implementation of each resident's individualized resident care plan;

(v) Supervise appropriate delivery of program modalities and services;

(vi) Integrate various aspects of the treatment program;

(vii) Maintain thorough clinical records for each resident;

(viii) Establish periodic reviews of each resident care plan;

(ix) Provide orientation for each new employee to acquaint them with the philosophy, organization, practices, and goals of the treatment program;

(x) Provide in-service training for any employee who has not achieved the desired level of competence;

(xi) Promote continuing education opportunities for all employees to update and improve their skills.

(2) Professional Staff.

(a) The facility shall have administrative, qualified health care professional, and support staff available to assess and address resident needs within its scope of services.

(b) Qualified professional staff includes psychiatrists, physicians, clinical psychologists, social workers, licensed nurses, and other health care professionals in sufficient number to provide services offered by the facility.

(c) When qualified professional staff members other than nursing staff are not available on a full-time basis, they shall be available on a part-time basis or by contract agreement to fulfill the requirements and needs of the treatment programs offered.

(d) The professional staff shall determine what qualifications are required to assume specific responsibilities.

(i) All members of the treatment team who have been assigned specific responsibilities shall be qualified for that position by training and experience.

(ii) Services shall be supervised by qualified, licensed personnel.

(e) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(i) The facility shall maintain documentation and copies of the license, certification, or registration for Department review.

(ii) Failure to ensure that employees are current for licensure, certification or registration may result in sanctions to the facility license.

(f) The facility shall have a Health Surveillance policy which conforms with R432-150-10(4).

(3) Orientation.

(a) These rules shall apply in addition to R432-150-10(5).

(b) All new employees shall be oriented to job requirements, personnel policies, and job training beginning the first day of employment.

(c) Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first three months of employment.

(d) New employees shall receive orientation to the following:

(i) Administration, organization, policies and procedures, job training, responsibilities, and philosophy of the treatment program;

(ii) Resident rights;

(iii) Safety and security procedures for fire, disaster, and AWOL;

(iv) Symptoms of residents with maladaptive behaviors;

(v) Training how to respond appropriately to residents' sexual behavior;

(vi) Suicide precautions;

(vii) Procedures for first aid and medical emergencies;

(viii) Medical recording or charting; medication sheets if pertinent to the job assignment;

(ix) Reporting abuse, neglect and exploitation; and

(x) Quality assurance objectives.

(e) Registered nurses and licensed practical nurses will receive additional orientation to the following:

(i) Concepts of treatment for residents with mental disease;

(ii) Roles and functions of nurses in treatment programs for residents with mental disease;

(iii) Nursing policy and procedure manuals;

(iv) Psychotropic medications.

(4) Staff growth and development.

(a) These rules shall apply addition to R432-150-10(6).

(b) In-service sessions shall be planned in advance and shall be held at least quarterly.

(c) In-service education shall be available to all employees.

(i) Aides shall receive at least the following training:

(A) Basic health - to learn nursing skills in non-complicated nursing situations;

(B) Basic first aid;

(C) Communications;

(D) Introduction to human services;

(E) Understanding behavior - the resident's and the staff's; appropriate and inappropriate behaviors; responsibility to report undesirable behaviors to supervisors.

(ii) Licensed professional staff shall receive continuing education to keep informed of significant new developments and skills.

(iii) The facility should make use of opportunities outside the facility, such as workshops, institutes, seminars, and formal classes to supplement the facility's program of continuing education.

R432-151-10. Resident Evaluation.

(1) Evaluation - Recognition of mental health needs and intervention/treatment for residents should be considered, documented, and implemented.

(2) At least two of the following criteria, which can be verified through medical record documentation, shall be used to identify whether there is a need for evaluation of mental disease:

(a) When there are marked changes in the person's behavior;

(b) When behavioral and socially functional strengths become weaknesses, and to what extent this has occurred;

(c) When the mood of a resident is prolonged, exaggerated, and not in keeping with the circumstances of the attending situation and environment;

(d) When these abnormal exaggerated states extend over unusually long periods of time, whether lasting for days, weeks, or months; criteria for abnormal behavior involves depth, duration, and situations;

(e) When observations of behavior take into account the resident's postures, gestures, tone of voice, walk, ideas expressed, intellectual symptoms, emotions/emotional responses, and degree of motor activity;

(f) When there are special supervisory precautions recommended for the health and safety of the resident

(situations such as suicidal; runaway; careless smoker; history of non-compliance with medication).

(3) Service patterns shall be determined using the Utah Level of Care Survey. The outcome may affect whether the facility should be considered an MDF.

R432-151-11. Admission.

(1) This section shall apply in addition to R432-150-13.

(2) Admission shall be determined by treatment program criteria and the needs of the residents.

(a) Admission criteria shall be clearly stated in writing in facility policies.

(b) Acceptance of a resident for treatment shall be based on the following:

(i) The resident requires treatment appropriate to the environmental restrictions and level of care provided by the facility;

(ii) The treatment required is appropriately provided within the program;

(iii) Alternative placement for less intensive care or less restrictive environment is not available.

(c) Admitting personnel will inform applicants during the intake process about the following:

(i) Services that are available;

(ii) Activities and goals of the treatment program;

(iii) Information shall be obtained during the intake process to facilitate development of a preliminary resident care plan.

R432-151-12. Resident Rights.

(1) These rules shall apply in addition to R432-150-12 and shall provide emphasis to resident rights.

(2) The facility shall support and protect the resident's basic rights as follows:

(a) being allowed to take responsibility for oneself;

(b) to be free to exercise judgement;

(c) to exist as an individual;

(d) to preserve unimpaired functions.

(3) These rights shall include the following:

(a) The resident has the right to receive treatment that does not create irreversible conditions.

(b) Residents shall be allowed to conduct private telephone conversations with family and friends.

(i) When therapeutic indications necessitate restrictions on visitors, telephone calls, or other communications, those restrictions shall be evaluated for therapeutic effectiveness by responsible staff at least every seven days.

(ii) Evaluations and determinations will be documented.

(iii) When limitations on visitors, telephone calls, or other communications are indicated for practical reasons due to expense of travel or long distance telephone calls such limitations shall be determined with participation of the resident and other persons involved.

(c) Each resident shall have the right to request the opinion of a consultant at his or her expense, or to request an in-house review of the individual treatment plan.

(d) Each resident shall be informed of his or her rights in a language and vocabulary the resident should understand.

(e) The resident shall have the right to be fully informed about the following:

(i) Rights and responsibilities of residents, including rules governing resident conduct and types of infractions that can result in restrictions or discharge.

(ii) Staff members who are responsible for resident care, their professional status, their staff relationship, and reasons for changes in staff;

(iii) Type of care, procedures, and treatment the resident will receive;

(iv) Use and disposition of special observation and audiovisual techniques;

(v) Risks, side effects, and benefits of medications and treatment procedures used;

(vi) Alternate treatment procedures that are available;

(vii) The right to refuse specific medications or treatment procedures and medical consequences as a result of such refusal;

(viii) Costs to be borne by the resident or family, and itemized cost, whenever possible, of services or treatment rendered;

(ix) Sources of reimbursement and any limitations placed on duration of services.

(f) The resident shall be informed immediately whenever a right is taken away and why. The circumstances to regain the right shall also be explained.

(g) Residents shall have the right to free exercise of religious beliefs and to participate in religious worship services. No individual will be coerced or forced into engaging in any religious activity.

R432-151-13. Resident Care Plans.

(1) These rules shall apply in addition to R432-150-13 and shall provide emphasis regarding resident care plans.

(2) The written resident care plan shall be based on a complete assessment of each resident, and should include the resident's physical, emotional, behavioral, social, recreational, legal, vocational, and nutritional needs.

(a) The facility staff shall obtain, review, and update assessment data.

(b) When information has been obtained by other facilities or agencies prior to the resident's admission, reports should be obtained which cover the required assessments.

(3) The preliminary resident care plan shall be completed within seven days of admission.

(a) Plans must be reviewed on a monthly basis for the first three months; thereafter at intervals determined by the interdisciplinary team but not to exceed every other month at approximately 60-day intervals.

(b) When a resident is discharged and readmitted, a new resident care plan must be developed.

(4) A physician or nurse practitioner shall assess each resident's physical health within five days prior to or within 48 hours after admission.

(a) A history and physical exam shall be done which includes appropriate laboratory work-up;

(b) a determination of the type and extent of special examinations, tests, or evaluations needed; and

(c) when indicated, a thorough neurological exam.

(5) A written comprehensive health assessment, compiled by professional staff members, shall include the following:

(a) Alcohol and drug history including the following:

(i) drugs used in the past;

(ii) drugs used recently, especially within the preceding 48 hours;

(iii) drugs of preference;

(iv) frequency with which each drug is used;

(v) route of administration of each drug;

(vi) drugs used in combination;

(vii) dosages used;

(viii) year of first use of each drug;

(ix) previous occurrences of overdose, withdrawal, or adverse drug reactions;

(x) history of previous treatment received for alcohol or drug abuse;

(b) Degree of physical disability and indicated remedial or restorative measures including:

(i) nutrition,

(ii) nursing,

(iii) physical medicine, and

(iv) pharmacologic intervention;

(c) Degree of psychological impairment and appropriate measures to be taken to relieve treatable distress or to compensate for non-reversible impairments;

(d) Capacity for social interaction and what appropriate rehabilitation or habilitation measures are to be undertaken, including group living experiences and other activities to maintain or increase the individual's capacity to independently manage daily living.

(e) A written emotional or behavioral assessment of each resident shall be entered in the resident's record. The assessment shall include the following:

(i) A history of previous emotional or behavioral problems and treatment;

(ii) The resident's current level of emotional and behavioral functioning;

(iii) A psychiatrist's evaluation within 30 days prior to or within one week after admission;

(iv) When indicated, a mental status assessment appropriate to the age of the resident;

(v) When indicated, psychological assessments which include intellectual and personality testing;

(vi) Other functional assessments such as language, self-care ability, and visual-motor coordination.

(f) A written social assessment of each resident shall include information about the following:

(i) Home environment;

(ii) Childhood history;

(iii) The resident's family circumstances; the current living situation; social, ethnic, and cultural background; sexual abuse;

(iv) Resident and family strengths and weaknesses;

(v) Military service history if applicable;

(vi) Financial resources;

(vii) Religion;

(g) A written activities assessment of each resident shall include information about current skills, talents, aptitudes, interests, and attitudes.

(h) A nutritional needs assessment shall be conducted and documented.

(i) When appropriate, a written vocational assessment of the resident shall include:

(i) Previous occupations including brief descriptions of the type of work, duration of employment, reasons for leaving, etc.;

(ii) Education history, including academic or vocational training;

(iii) Past experiences and attitudes toward work, present motivations, areas of interest, and possibilities for future education, training, or employment.

(j) When appropriate, a written assessment of the resident's legal status shall include:

(i) A history with information about competency, court commitment, prior criminal convictions, any pending legal actions;

(ii) The urgency of the legal situation;

(iii) How the individual's legal situation may influence treatment.

(k) The facility shall develop procedures which describe early intervention for symptoms that are life-threatening, are indicative of disorganization or deterioration, or may seriously affect the treatment process.

(l) The resident care plan shall comply with R432-150-13(4) and include the following:

(i) Treatment goals expressed as standards of achievement;

(ii) Services or treatment to be provided (based on assessments), at what intervals, and by whom;

(iii) Nutritional requirements;

(iv) Security precautions;

(v) Precautions and interventions for maladaptive behaviors;

(vi) Restrictions or loss of privileges, if any; factors to regain privileges;

(vii) Date the plan was initiated and dates of subsequent reviews;

(viii) Discharge planning.

R432-151-14. Active Treatment.

(1) Active treatment programs shall provide services reasonably expected to improve the resident's condition.

(2) Active Treatment services shall be offered in an environment that encompasses as many physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components as necessary to achieve this purpose.

(3) Active treatment shall fulfill these objectives:

(a) To modify or minimize symptoms and conditions contributing to the need for treatment;

(b) To promote humane conditions, such as abilities to relate constructively, to care, and to fulfill human needs (affection, recognition, self-esteem, self-realization) within individual capabilities.

(c) If the planned or prescribed activities are primarily diversional in nature and thus provide only some social or recreational outlet for the resident, they shall not be regarded as active treatment to improve the resident's condition.

(d) Administration of a drug or drugs expected to significantly alleviate a resident's symptoms shall not of itself constitute active treatment.

(e) An active treatment program shall include the following components:

(i) Supervision by a physician.

(ii) An interdisciplinary professional evaluation.

(A) that is completed preferably before admission to the facility and definitely before the facility requests payment;

(B) that consists of complete medical diagnosis, social and psychological evaluations, and evaluation of the individual's need for psychiatric care;

(C) that is made by a psychiatrist (physician), a social worker, and other professionals, at least one of whom is qualified by at least one year of experience in treatment of residents with mental disease.

(iii) Periodic reevaluation (preferably on a quarterly basis, but not to exceed six month intervals) medically, socially, and psychologically by the staff involved in carrying out the resident's individual plan of care. This reevaluation must include review of the individual's progress toward meeting the plan objectives, appropriateness of the plan of care, assessment of continuing need for institutional care, and consideration of alternative methods or placement for care.

(iv) An individualized written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences, or therapies necessary for the individual to reach those goals or objectives.

(v) A post-institutional plan, as part of the individual plan of care, developed by the interdisciplinary team prior to discharge. This plan must include considerations for follow-up services, protective supervision if necessary, and other services available as needed in the resident's new environment.

(vi) The resident's regular participation in professionally developed and supervised activities, experiences, or therapies in accordance with the resident's individualized plan of care.

R432-151-15. Special Treatment Procedures.

(1) The facility shall identify special treatment procedures that require justification for use, and shall develop standards governing the use of these procedures consistent with resident rights and facility policy.

(2) Standards must include:

(a) Use of seclusion and time out;

(b) Prescription and administration of drugs;

(c) Use of involuntary medication;
(d) Use of procedures that involve physical risk for the resident;
(e) Use of procedures to treat maladaptive behaviors other than use of painful stimuli.
(3) Use of painful stimuli is not allowed.
(4) Indications for use of special treatment procedures shall be documented in the resident's record.

R432-151-16. Security.
(1) The facility shall follow its established written procedure in the event of resident AWOL or elopement so that the resident is returned to the facility in as short a time as possible.
(2) In all cases of AWOL, the program director, family or significant others, and appropriate agencies outside the facility (police, highway patrol, etc.) shall be notified according to written facility policy and procedure.
(3) There shall be documentation and review of all aspects of the AWOL.
(a) Notation of the AWOL must be in the resident record with more detail in an incident report kept by the administrator.
(b) These reports shall be made available for Department review upon request.
(4) Facility policy shall define the staff's escort responsibility, conduct, and liability.

R432-151-17. Industrial Therapy.
(1) Job placement may be an element of resident treatment and may be offered to provide therapeutic benefit on an individual basis.
(2) The goal of the industrial program shall include development of the resident's skills to deal with situations and problems which happen on the job, to accept responsibility, and to perform under direction of supervisors.
(3) No resident shall work as a substitute for staff.
(4) The job placement shall comply with local, state, and federal laws and regulations.
(5) Compensation.
(a) Residents who have a job shall receive pay commensurate with the economic value of the work.
(b) The resident shall receive appropriate compensation for labor performed away from the facility.
(c) Residents may be encouraged to perform personal housekeeping tasks without compensation as part of a rehabilitation or habilitation program.

R432-151-18. Transfer Agreements.
(1) This section shall apply in addition to R432-150-22.
(2) Each referral to and from the facility shall be governed by criteria that the most effective treatment in the least restrictive environment shall be available and accessible to a resident.
(a) The staff shall assess resident needs and provide necessary services within the facility according to its treatment capabilities.
(b) Services of other facilities shall be utilized when the resident requires care beyond the capabilities of the facility.
(3) Transfer agreements between facilities shall be obtained.
(a) Continuity of resident care shall be a joint responsibility between the facilities involved.
(b) Continuity of resident care is assured by providing:
(i) Reason(s) for the referral;
(ii) Information about the resident such as current treatment, medications, behavior, special precautions;
(iii) Current treatment objectives;
(iv) Suggestions for continued coordination between the receiving and referring facility;
(v) Information whom to contact, such as significant others or treatment coordinator.
(4) Residents shall not be transferred to another facility without prior contact with that facility. The referring treatment coordinator shall contact the receiving facility immediately or within 24 hours to insure temporary placement or admission.
(5) All information pertaining to clients shall be kept confidential and disclosed only by authorized staff to others directly involved in the resident's care and treatment except under the following conditions:
(a) When a resident's written informed consent is obtained to share specific information with appropriate parties;
(b) When an emergency exists with reason to believe there is imminent danger to the resident or others;
(c) When there is a court order to produce specific records;
(d) When the law enforcement agency requires release of specific pertinent information.

R432-151-19. Physician Services.
(1) This section shall apply in addition to R432-150-16.
(2) A physician should be responsible to monitor physical or medical needs; a psychiatrist must be responsible to monitor mental health needs and medications prescribed for these needs.
(3) General requirements.
(a) Each resident in need of psychiatric services shall be under the care of a psychiatrist licensed to practice in Utah.
(b) Each resident shall be permitted to choose a personal psychiatrist.
(c) Psychiatrist responsibilities.
(i) A psychiatrist must complete a psychiatric evaluation within 30 days prior to, or within one week after, admission.
(ii) Requirements for psychiatrist visits shall be the same as requirements for physician visits in R432-150-16. EXCEPT:
(A) Whenever possible, visits should be made on alternating months from physician visits.
(B) The psychiatrist shall see the resident whenever necessary but at least every other month at approximately 60-day intervals.
(C) The psychiatrist may have the option to establish and follow an alternate schedule of visits, but visits must not exceed four month intervals.
(D) A progress note shall be written in the resident's record at each visit.

R432-151-20. Nursing Services.
(1) Nursing services shall be available to residents who require such services.
(2) There shall be nursing staff available according to Table 1 to meet medical needs.
(a) There shall be 24-hour licensed nurse coverage.
(b) In a skilled nursing facility, a registered nurse shall be on duty at least sixteen hours per 24-hour period seven days a week to plan, assign, supervise or provide, and evaluate nursing care needs of the residents.
(3) All prescribed medications shall be administered by licensed personnel.
(4) In an intermediate care facility, if the health services supervisor is a licensed practical nurse, the registered nurse consultant shall be contacted within three days of a new admission to review the resident care plan.
(5) Schedules shall be maintained to indicate hours worked in the treatment program by regularly assigned and relief registered nurses, licensed practical nurses, and aides. The facility shall retain staff schedules and payroll records for at least a 12-month period.
(6) Aides performing housekeeping, dietary, or other functions shall maintain time records reflecting actual time spent in nursing care and time spent in other tasks. Time spent in other tasks will not be included in nursing care staffing ratios.

(7) Table 1 represents the minimum acceptable standards for hours of nursing care; additional staffing time may be necessary to accommodate variables such as staff illness or vacation, resident census, or status and behavior of residents.

TABLE 1

HOURS OF NURSING CARE PER SKILLED AND INTERMEDIATE LEVEL RESIDENT

Type of Resident	Total Nursing Hours per Resident per 24 hrs. (RN + LPN + Aide)	Licensed Nursing Hours per resident per 24 hrs. (RN + LPN only)
SKILLED	2.5 (150 minutes)	30% (45 minutes)(a)
INTERMEDIATE	2.0 (120 minutes)	30% (36 minutes)(a)

(a) Shall not include director of nursing or health services supervisor in a facility with a resident census over 60.

R432-151-21. Resident Records.

(1) These rules shall apply in addition to R432-150-25 and shall provide emphasis regarding resident records.

(2) Contents of the resident record shall describe the resident's physical and mental health status at the time of admission, the services provided, the progress made, and the resident's physical and mental health status at the time of discharge.

(3) The resident record shall contain the following:

(a) Identifying data that is recorded on standardized forms:

(i) the resident's name;

(ii) home address;

(iii) home telephone number;

(iv) date of birth;

(v) sex;

(vi) race or ethnic origin;

(vii) next of kin;

(viii) education;

(ix) marital status;

(x) type and place of last employment;

(xi) date of admission;

(xii) legal status, including relevant legal documents;

(xiii) date the information was gathered; and names and signatures of the staff members gathering the information.

(b) Information for review and evaluation of treatment provided to the resident.

(c) Documentation of resident and family involvement in the treatment program.

(d) Prognosis.

(e) Information on any unusual occurrences, such as treatment complications; accidents or injuries to or inflicted by the resident, procedures that place the resident at risk, AWOL.

(f) Physical and mental diagnoses using a recognized diagnostic coding system.

(g) Progress notes written by the physician, psychiatrist. nurse, and others involved in active treatment.

(i) progress notes should contain an on-going assessment of the resident.

(ii) Progress notes shall be written in the resident's record by each professional discipline at least monthly for the first three months and every other month thereafter at approximately 60 day intervals.

(iii) Progress notes shall be summaries of notes written at more frequent intervals, as determined by the condition of the resident or by facility policy, including the following:

(A) Documentation which supports implementation of the resident care plan and the resident's progress toward meeting these planned goals and objectives;

(B) Documentation of all treatment and services rendered to the resident;

(C) Chronological documentation of the resident's clinical course;

(D) Descriptions of changes in the resident's condition;

(E) Descriptions of resident response to treatment, the outcome of treatment, and the response of significant others to these changes.

(iv) All entries involving subjective interpretation of the resident's progress should be supplemented with a description of the actual behavior observed.

(v) Efforts should be made to secure written progress reports from outside sources for residents receiving services away from the facility.

(h) Reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(i) Correspondence and signed and dated notations of telephone calls concerning the resident's treatment.

(j) A written plan for discharge including information about the following:

(i) Resident's preferences and choices regarding location and plans for discharge;

(ii) Family relationships and involvement with the resident;

(iii) Physical and psychiatric needs;

(iv) Realistic, basic financial needs;

(v) Housing needs;

(vi) Employment needs;

(vii) Educational/vocational needs;

(viii) Social needs;

(ix) Accessibility to community resources;

(x) Designated and documented responsibility of the resident or family for follow-up or aftercare.

(k) A discharge summary signed by the physician and entered into the resident record within 60 calendar days from the date of discharge;

(i) In the event a resident dies, the discharge statement shall include a summary of events leading to the death.

(ii) Transfer to another facility for more than 72 hours shall cause the resident record to be closed with a discharge summary.

(A) A new record shall be initiated at the time of readmission.

(B) If the interval from discharge to readmission is less than 30 days, previous assessments may be reviewed and a copy brought forward from the prior record. The assessment must be identified either as an original or as a copy, and include updated information.

(l) Reports of all assessments.

(m) Consents for release of information, the actual date the information was released, and the signature of the staff member who released the information:

(i) The facility may release pertinent information to personnel responsible for the individual's care without the resident's consent under the following circumstances:

(A) In a life-threatening situation;

(B) When an individual's condition or situation precludes obtaining written consent for release of information;

(C) When obtaining written consent for release of information would cause an excessive delay in delivering treatment to the individual.

(ii) When information has been released under the conditions listed in R432-151-21(3)(m), the transaction shall be entered into the resident's record, including at least the following:

(A) The date the information was released;

(B) The person to whom the information was released;

(C) The reason the information was released;

(D) The reason written consent for release of information could not be obtained;

(E) The specific information released;

(F) The name of the person who released the information.

(iii) The resident shall be informed of the release of information as soon as possible.

(n) Pertinent prior records available from outside sources.

(4) The confidentiality of the records of substance abuse residents shall be maintained according to 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

R432-151-22. Quality Assurance.

(1) This section shall apply in addition to R432-150-11.

(2) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated on at least a quarterly basis by an interdisciplinary quality assurance committee.

(3) A written report of findings from each meeting shall be submitted to the administrator and shall be available for review by the Department.

(4) Committee composition.

(a) Members of the quality assurance committee shall be appointed by name in writing by the administrator for a given term of membership.

(b) The committee shall have a minimum of three members with representation from at least three different licensed health care professions.

(5) Methodology for evaluation includes:

(a) Review and evaluation of active and closed resident records to assure that established policies and procedures are being followed;

(b) Facility policy and procedure will determine the method(s) to be followed for selection and review of the representative sample of active and closed records;

(c) Review and evaluation whether needed services were provided;

(d) Review and evaluation of coordination of services whenever appropriate through documentation of written reports, telephone consultation, or case conferences; and

(e) Review and evaluation of the resident plans of treatment for content, frequency of updates, and whether progress notes correspond to goals stated in the resident care plan.

R432-151-23. Housekeeping.

Housekeeping services shall comply with R432-150-26.

R432-151-24. 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
March 3, 1995 26-21-5
Notice of Continuation November 21, 2007 26-21-16

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-1. Duties of the Department of Health.
R436-1-1. Definitions.

(1) Terms used in this rule are defined in Section 26-2-2.

(2) In addition, "Information for medical and health use only," means all of the information in the lower portion of the birth certificate and the similar information on the fetal death certificate; and the date and sex of the birth, death or fetal death.

R436-1-2. Forms.

All forms, certificates, and reports used in the system of vital statistics are the property of the Utah Department of Health, hereinafter referred to as "Department" and are subject to its rules and regulations. Only forms furnished by the State Registrar of Vital Statistics, hereinafter referred to as "State Registrar," shall be used in the reporting of vital statistics or in making copies thereof. These forms shall be used only for official purposes.

R436-1-3. Requirements for Preparation of Certificates.

All certificates and records relating to vital statistics must be prepared on a typewriter or other word processing equipment with a black ribbon or printed legibly in black, unfading ink. All required signatures shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and acceptable for registration that:

(a) does not have the certifier's name typed or printed legibly under his signature;

(b) does not supply all items of information called for, or satisfactorily account for their omission;

(c) contains alterations or erasures that would be apparent on certified copies or would not be as permanent as the record itself;

(d) does not contain handwritten signatures as required;

(e) is marked "copy" or "duplicate;"

(f) is a carbon copy;

(g) is prepared on an improper form;

(h) contains inconsistent data;

(i) contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

(j) is not prepared in conformity with rules or instructions issued by the Department.

R436-1-4. Designation of Additional Offices.

(1) Full-time local health officers may be designated by the Department to serve as the local registrar of vital statistics for the area they serve as health officer. They shall carry out their required duties without payment of any additional fee. For areas of the state not served by a full-time local health officer, the Department, acting through the State Registrar, shall designate an individual to serve as local registrar.

(2) The State Registrar shall delegate such duties and responsibilities to the local registrars as is deemed necessary to insure the efficient operation of the system of vital statistics. These may include the following:

(a) The receipt and processing of birth, death, and spontaneous fetal death records. This includes the receipt of these records from the person responsible for filing the record, checking it for accuracy and completeness, making a local copy, and forwarding the original to the State Registrar at least once a week.

(b) Issuance of certified copies of birth, death, and fetal death certificates after receiving written authorization from the State Registrar. Certified copies shall be issued only from the following documents:

(i) the original certificate;

(ii) a facsimile copy or other electronically transferred copy from the State Registrar;

(iii) the local registrar's copy of the original certificate.

All forms and procedures used to issue the copies shall be provided or approved by the State Registrar.

(c) Issuance of burial-transit and disinterment permits and other designated forms as prescribed by regulation or direction of the State Registrar.

(d) Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics.

(3) The State Registrar, with the approval of the Department, shall determine the responsibilities and duties of each office independently.

R436-1-5. Name of Child.

A newborn child's name should be recorded on the birth certificate as determined by its' parents. If the parents disagree on the child's name and they have never married each other or are separated or divorced, the custodial parent shall determine the child's name. If the parents are married to each other and cannot agree on the child's name, it may be left blank on the birth certificate and added later by an Affidavit to Amend a Record or by court order.

KEY: vital statistics, standards, appointment to office, custody of children
1993 26-2-3
Notice of Continuation November 21, 2007 26-2-4

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-2. Infants of Unknown Parentage; Foundling Registration.
R436-2-1.

The report for an infant of unknown parentage shall be registered on a foundling certificate of live birth and shall, unless more definitive information is available:

(a) Show the date and place of finding.

(b) Show the signature and title of the custodian in lieu of the attendant during delivery.

If the child is identified and a certificate of birth is found or obtained, the foundling certificate shall be placed in a sealed file and shall not be open to inspection, except on the order of a court.

KEY: vital statistics, custody of children
1989 26-2-6
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-3. Amendment of Vital Records.
R436-3-1. Definitions.

For purposes of this rule "putative father" means the man the birth mother specifies as the birth father.

R436-3-2. Correction of Minor Errors on Birth Certificates.

Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the Registrar while the original certificate is still in the local office, based on personal observation, query, or upon the request of a person with a direct and tangible interest in the certificate as defined in R436-13-1(1). When such additions or minor amendments are made by the Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change, shall be made on the certificate in such a way as not to become a part of any certification issued. The certificate shall not be marked "Amended." After the certificate is registered and the original has been transmitted to the State Registrar and processing completed, all corrections must be made by amendment.

R436-3-3. Amendments to Correct Errors or Omissions.

(1) Whenever facts are not correctly stated in any certificate of birth, death or fetal death already registered, the person asserting that the error exists may make an affidavit under oath on the form prescribed by the State Registrar stating the corrections necessary to make the record correct. Such corrections shall be supported by the affidavit of one other credible person having knowledge of the facts. Such certificate, as corrected, shall be filed with the state or local registrar.

(2) If the amendment relates to a certificate which has not been transmitted to the State Registrar, the local registrar shall review the amendment for adequacy for filing. If the local registrar finds reason to doubt the adequacy of the amendment it shall be referred to the State Registrar.

(3) If the amendment relates to a certificate which has been transmitted to the State Registrar, the amendment shall be transmitted to the State Registrar who shall review it for acceptance for registration. If the State Registrar has reason to doubt the adequacy of the amendment, one or more items of documentary evidence to support the alleged facts may be required. A Supplemental Name Report may be used to add a child's name to its birth certificate when this information was not given at the time the certificate was registered. This form must be signed by both parents.

(4) An amendment shall be filed with and become part of the record to which it pertains. The original certificate shall be marked "Amended, 1 of 2," or however many parts the amendment may require. Subsequent parts will be marked accordingly.

(5) When an amendment is accepted, the State Registrar shall transmit copies of the amendment to the local registrar in whose office a copy of the original record is on file.

R436-3-4. Amendment of Medical and Health Data.

(1) Whenever the originally furnished medical and health data of any record of death, fetal death, or live birth is modified by supplemental information the certifying physician or medical examiner having knowledge of this information, may certify, under penalty of perjury, the changes necessary to make the information correct. The cause of death information may also be amended by the physician who performs an autopsy on the deceased.

(2) This amendment shall be processed in the manner prescribed in Section R436-3-2 of these rules.

R436-3-5. Acknowledgement of Paternity by Natural Parents.

(1) If the mother was married at any time during the pregnancy, the name of the husband shall be entered on the certificate as the father of the child, unless:

(a) paternity has been determined otherwise by a district court of this state, or

(b) the mother and the mother's husband execute joint or separate affidavits attesting that the husband is not the father of the child. The signature of the mother and of the husband shall be individually notarized on affidavit form(s). In such event, information about the father shall be omitted from the certificate, or

(c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate.

(2) If the mother was not married at any time during the pregnancy, the name of the father shall not be entered on the certificate without a declaration of paternity signed by the mother and the putative father.

(3) In any case in which paternity of a child is determined by a district court of this state, the name of the father and surname of the child shall be added to the certificate of birth in accordance with the finding and order of the court. If the court order does not specifically change the surname of the child, the child's surname shall remain the name listed on the original birth certificate.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(5) The affidavit for the declaration of paternity referenced in this rule shall be on a form provided by the State Registrar. When completed prior to the registration of the birth certificate they will be filed with the original birth certificate. When completed after the birth certificate has been registered they should be transmitted to the State Registrar for filing.

KEY: vital statistics, amendments, fathers, mothers
1994 26-2-7
Notice of Continuation November 21, 2007 78-45a-7

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-4. Delayed Registration of Birth.
R436-4-1. Registration - Ten Days to One Year.

(1) By authority of Subsection 26-2-8(1), certificates of birth filed after ten days, but within one year from the date of birth, shall be registered on the standard birth certificate in the manner prescribed in Section 26-2-5. Such certificate shall not be marked "Delayed."

(2) The State Registrar may require additional evidence in support of the facts of birth and an explanation of why the birth certificate was not filed within the required ten days.

R436-4-2. Delayed Birth Certificate Form.

All certificates registered one year or more after the date of birth are to be registered on a delayed birth certificate form prescribed by the State Registrar.

R436-4-3. Who May Request the Registration of and Sign a Delayed Birth Certificate.

(1) If the birth of any person born in this state is not recorded in this state, the registrant (if 18 or older), the registrant's parent(s) or guardian, next of kin, or person older than the registrant having personal knowledge of the facts of birth, may request the registration of a delayed birth certificate subject to these rules and instructions issued by the State Registrar.

(2) Each delayed birth certificate shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered. The registrant must be 18 years of age or over and competent to swear to the accuracy of the facts stated therein. If not, the certificate shall be signed and sworn to by one of the following in the indicated order of priority:

(a) One of the parents of the registrant;

(b) The guardian of the registrant;

(c) A relative who is older than the registrant;

(d) Any person older than the registrant having personal knowledge of the facts of birth.

(3) A delayed birth certificate shall not be filed for deceased individuals when application is made more than seven years after the birth is alleged to have occurred.

R436-4-4. Facts to be Established for a Delayed Registration of Birth.

(1) The minimum facts which must be established by documentary evidence shall be the following:

(a) The full name of the person at the time of birth;

(b) The date and place of birth;

(c) The full maiden name of the mother;

(d) The full name of the father; except that if the mother was not married either at the time of conception or at any time during pregnancy, the name of the father shall not be entered on the delayed certificate except as provided in R436-3-4.

R436-4-5. Documentary Evidence - Requirements.

(1) To be acceptable for filing, the name of the registrant and the date and place of birth entered on a delayed birth certificate shall be supported by at least:

(a) Two pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed in less than seven years after the date of birth;

(b) Three pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed seven years or more after the date of birth.

(2) Facts of parentage shall be supported by at least one of the above documents, which is not an affidavit of personal knowledge.

R436-4-6. Documentary Evidence - Acceptability.

(1) Documents presented, such as census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or duly certified copy thereof or a signed statement from the custodian of the record or document. All documents submitted into evidence, other than an affidavit of personal knowledge, must have been established at least ten years prior to the date of application or must have been established prior to the applicant's tenth birthday. Applications for delayed registration more than seven years after the birth must have at least one document that was established within 15 years of the date of birth.

(2) To be acceptable, an affidavit of personal knowledge must be prepared by one or both parents, other relative, or any person older than the registrant who has knowledge of the facts, and must be signed before an official authorized to administer oaths.

R436-4-7. Abstraction of Documentary Evidence.

(1) The State Registrar shall abstract on the delayed birth certificate a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

(a) The title or description of the document;

(b) The name and relationship of the affiant, if the document is an affidavit of personal knowledge, or the custodian, if the document is an original or certified copy of a record or a signed statement from the custodian;

(c) The date the document being abstracted was originally filed;

(d) The information regarding the birth facts contained in the document.

(2) All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

R436-4-8. Certification by the State Registrar.

The State Registrar shall, by signature, certify:

(1) That no prior birth certificate is on file for the person whose birth is to be recorded;

(2) That the evidence submitted to establish the facts of birth has been reviewed;

(3) That the abstract of the evidence appearing on the delayed birth certificate accurately reflects the nature and content of the documents submitted to establish the facts of the birth.

R436-4-9. Dismissal After One Year.

Applications for delayed certificates which are inactive for one year may be dismissed at the discretion of the State Registrar.

R436-4-10. Delayed Registration of Birth Resulting in Stillbirth.

(1) If the parent or parents of a stillborn child request a certificate of birth resulting in stillbirth for the stillborn child that has not been registered within one year after the date of delivery, the state registrar shall search for the certificate of fetal death required under Section 26-2-14.

(2) If a certificate of fetal death for the stillborn was registered in the state of Utah, the state registrar shall provide the parent or parents a certificate of birth resulting in stillbirth based on the facts on the certificate of fetal death, with no additional documentary evidence required. Correction of errors or omissions on the original certificate of fetal death will be made in accordance with R436-3, except that an affidavit from one parent is sufficient to establish the name of the stillborn child.

(3) If a certificate of fetal death was not registered for the stillborn, the minimum facts that the applicant must establish by

documentary evidence to register the birth resulting in stillbirth are:

(a) date of delivery.

(b) place of delivery.

(c) full maiden name of the mother.

(d) full name of the father, except that if the mother was not married either at the time of conception or at any time during the pregnancy, the name of the father shall not be entered on the certificate except as provided in 436-3-5.

(e) gestation of 20 weeks or more, as reported by the physician in attendance.

(f) name of delivery attendant.

KEY: vital statistics, evidence

December 19, 2002	**26-2-8**
Notice of Continuation November 21, 2007	**26-2-19**
	26-2-14.1
	26-2-14.2

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-7. Death Registration.
R436-7-1.

If all information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director shall file the certificate completed with all information that is available. In all cases, the medical certification must be signed by the person responsible for such certification. If the cause of death is unknown, undetermined or pending investigation, the cause of death shall be shown as such on the certificate. Final disposition of the deceased shall not be made until authorized by the attending physician or the medical examiner. An amendment providing the information missing from the original certificate shall be filed with the State Registrar as soon as possible, but in all cases within 30 days after the date of the death.

KEY: vital statistics, death, funeral industries
1989 26-2-13
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-8. Authorization for Final Disposition of Deceased Persons.
R436-8-1. Removal of Body.

Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

(a) Obtain permission from the next of kin or the custodian of the remains to remove the body or fetus from the place of death, and obtain assurance from the attending physician that death is from natural causes, and that the physician will assume responsibility for certifying to the cause of death or fetal death.

(b) Determine whether or not the medical examiner has been notified, if the death comes within his jurisdiction. If the medical examiner has not been notified or if that fact is unknown, make the notification and obtain authorization to remove the body.

(c) When the dead body or fetus is being removed from the hospital or other place of death by the next of kin or other person acting as the funeral director, the hospital or other custodian of the body shall not release the body until they are presented with a burial-transit permit issued by the appropriate local registrar or the state registrar.

R436-8-2. Transportation of Dead Bodies.

Any body shipped by common carrier must be embalmed by a licensed embalmer in a manner approved by the State Board of Embalming. The body must be placed in either (a) a sound casket enclosed in a strong outside shipping case, or (b) a metal container specifically designed for this purpose. If the body cannot be embalmed or is in a state of decomposition, it may be shipped only after enclosure in any air-tight metal casket encased in a strong outside shipping case, or in a sound casket encased in an air-tight metal, or metal-lined shipping case. When any body is to be transported by common carrier, the burial-transit permit shall be attached to the shipping case.

Any body transported by means other than a common carrier must be encased in a container (such as a plastic bag) which ensures against seepage of fluid and the escape of odors. However, bodies transported by a licensed funeral director in a vehicle used for such purpose need not be so encased.

If a dead body is to be transported by means other than a common carrier and for a purpose other than preparation or storage, the burial-transit permit shall be attached to the container in which the body is enclosed or in the possession of the person transporting the body.

R436-8-3. Preservation of Bodies.

No human body may be held in any place or be in transit more than 24 hours after death and pending final disposition, unless either maintained at a temperature of not more than 40 degrees F. or embalmed by a licensed embalmer in a manner approved by the State Board of Embalming, or by the embalmer licensed to practice in the state where the death occurred.

R436-8-4. Authorization for Disinterment and Re-interment.

An authorization for disinterment and re-interment of a dead body shall be issued by the local registrar of the district where the body is interred or by the State Registrar, upon receipt of a written application signed by the next of kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of competent jurisdiction directing such disinterment. If the next of kin are in disagreement regarding the disinterment, the State Registrar may require a court order before issuing the disinterment permit.

Upon the relocation of a cemetery, the State Registrar or local registrar may issue a single disinterment permit to allow for mass disinterment of all bodies located in the cemetery. Prior to the issuance of this permit, the registrar must receive written agreement that insofar as possible, the remains of each body will be identified and the place of disinterment and re-interment will be specified and provided to the sexton of the cemetery where re-interment occurs.

A dead body properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

KEY: vital statistics, permits, funeral industries
1989 26-2-16
Notice of Continuation November 21, 2007 26-2-17

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-9. Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events.
R436-9-1.

Hospitals, birthing centers, and maternity homes shall prepare a monthly listing of all births that occurred in their facilities. This listing shall include the date of birth, the parents' names, the sex of the child and the name of the medical attendant. The aforementioned facilities shall also gather and keep in their files all the information needed to complete the birth certificates for these deliveries. Hospitals are also required to include on the listing all induced abortions (names not required) occurring in their facility.

Hospitals and nursing homes shall prepare a monthly listing of all the deaths and fetal deaths that occurred in their institutions. The listing should include date of death, name of the deceased, age, name of the medical attendant, name of the funeral director or the person acting as such.

Funeral directors shall keep a listing of all deaths for which they conducted a funeral or provided a casket. The funeral director's listing shall include the county where the death occurred in addition to the required identifying information. Sextons or other persons in charge of cemeteries shall prepare a listing of all burials and other dispositions in their cemeteries. The listing should include the date of death, name of the deceased, age, county where death occurred, and name of the funeral director or the person in charge of the burial.

The above listings shall be prepared in triplicate on forms provided by the State Registrar. One copy is to be sent to the State Registrar, one to the local registrar of the area where the facility is located, and the third is to be kept by the agency which prepared it.

These reports are to be mailed by the tenth of the month following the month of occurrence.

KEY: vital statistics, health facilities, funeral industries

1989	**26-2-16**
Notice of Continuation November 21, 2007	**26-2-18**
	26-2-23

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-10. Birth and Death Certificates.
R436-10-1. Registration and Transmittal of Certificates by Local Registrars to the State Registrar.

(1) Local registrars shall take appropriate action to be sure that all births and deaths that occur in their registration area are registered. Local registrars may only register vital statistics certificates for events which occur in their respective areas. In reviewing the certificates for these events prior to registration, the registrar shall check the certificates for completeness and accuracy. All appropriate items on the certificates should be completed in accordance to the item by item instructions issued by the State Registrar. To insure accuracy, cross-checks between items shall be made. The originators of certificates which are incomplete or inaccurate should be contacted and queried, in order to obtain the needed information.

(2) Registrars should check the certificates they receive against the monthly listings of hospitals, nursing homes, funeral directors, and sextons to verify that all vital statistics certificates are registered.

(3) Certificates acceptable for registration should have the date received and the registrar's signature entered in the appropriate places. Deputy local registrars, at the discretion of the local registrar, may use a signature stamp of the local registrar's signature. Stamped signatures should be initialed by the deputy applying the facsimile signature.

(4) After being signed and dated, certificates shall be assigned a local number. The local number is comprised of two elements: a numerical county indicator and a number for the event. Births and deaths (including fetal deaths) have their own numbering series. Each series begins anew at the start of each calendar year. However, certificates for events which occurred in a previous calendar year should be numbered in sequential order with the other events for the year in which they occurred.

(5) The local registrar shall then make a copy of the certificate for the local files and send the original certificate to the State Registrar. The certificates should be filed according to event (i.e., births and deaths, including fetal deaths) and according to year of occurrence. These files are confidential. All vital statistics records shall be kept in a secure place available only to authorized personnel.

(6) Original certificates shall be transmitted to the State Registrar within ten days of their receipt by the local registrar.

KEY: vital statistics, local government, standards
1989 26-2-19
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-12. Certified Copies of Vital Statistics Records.
R436-12-1. Qualifications for Local Registrars to Issue Certified Copies of Vital Statistics Records.

In addition to compliance with pertinent state statutes, standards for vital statistics registration and certification in local health departments are as follows:

(1) The full-time health director shall designate a specific position to have the responsibility of Deputy Local Registrar of Births and Deaths.

(2) The Deputy Local Registrar shall have adequate staff to provide necessary services in county offices during all working hours of the Department.

(3) Adequate office space shall be provided to house the required staff and necessary files or books of certificates.

(4) All registered certificates or copies thereof shall be in files or in other appropriate facilities so as to maintain the physical and legal integrity and the confidentiality of the certificates.

(5) Arrangements shall be made for the receipt of death certificates and issuance of burial permits 365 days a year.

(6) The original birth and death certificates shall be transmitted to the State Registrar on a regular basis. This shall not exceed ten days from the date of receipt by the local registrar.

(7) Birth and death certificates may be accepted by assistant deputy local registrars in county offices and burial permits may be issued by them. However, hospitals will routinely submit their birth certificates to the Deputy Local Registrar at the headquarters office of the local health department. Original birth and death certificates will be transmitted daily from each county office to the headquarters office and no copies will remain on file in the county office unless they have been authorized by the State Registrar to issue certified copies of birth and death certificates.

(8) Before a local registrar shall be authorized to issue certified copies of birth and death certificates as provided in Section 26-2-21, a written procedure shall be prepared and approved by the State Registrar. In addition, the local registrar shall demonstrate the availability of the following capabilities:

(a) An indexing procedure that provides for timely and accurate certificate retrieval.

(b) Photographic reproducing equipment that will provide a permanent copy of the certificate, using forms approved by the State Registrar.

(c) An accounting system that will provide for the collection, deposit, and reporting of all fees received for vital statistics transactions.

(d) Capability to amend or delete certificates from the local files when so notified by the State Registrar.

(e) Adequate staff and facilities so that the confidentiality of the vital statistics certificates is maintained and certified copies are issued only to persons who meet the criteria provided in Section 26-2-22.

KEY: vital statistics, local government, standards
1989 26-2-21
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-13. Disclosure of Records.
R436-13-1. Integrity of Vital Records.

To protect the integrity of vital records:

(1) The State Registrar and other custodians of vital records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record, unless the applicant has a direct and tangible interest in such record. In addition to the definition of direct, tangible, and legitimate interest as defined in Section 26-2-22, those who may or may not have a direct and tangible interest are as follows:

(a) The registrant, a member of the immediate family, the guardian, or a designated legal representative shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

(b) The term "legal representative" shall include an attorney, physician, funeral director, or other authorized agent acting in behalf of the registrant or family.

(c) The natural parents of adopted children, when neither has custody, shall not be considered to have a direct and tangible interest.

(d) Commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

(2) The State Registrar or the local custodian may provide copies of certificates or disclose data from vital statistics records to federal, state, county, or municipal agencies of government requesting such data in the conduct of their official duties. Certificate copies or individual identifiable information may not be given by the receiving government agency to other agencies or individuals, or used for purposes not authorized at the time of the request.

(3) The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. In emergencies, telephone requests may be accepted with documentation as to the identity of the person making the telephone request. Whenever it is determined necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.

(4) Nothing in this rule shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth and fetal death certificates or the "Information for Statistical Purposes Only" section of the Certificate of Marriage or Certificate of Divorce, Dissolution of Marriage, or Annulment unless specifically authorized by the State Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

KEY: vital statistics, copying processes, standards
1993 26-2-22
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-14. Copies of Data From Vital Records.
R436-14-1.

(a) Full or short form certified copies of vital records may be made by mechanical, electronic, or other duplicative processes.

(b) Each certified copy issued shall be certified as a true copy by the officer in whose custody the record is entrusted and shall include the date issued, the name of the issuing officer, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Local registrars shall issue certified copies only on forms approved by the State Registrar. Local registrars may issue certified copies using the seal of the State of Utah when authorized by the State Registrar.

(c) Verification of the facts contained in a vital record may be furnished by the State Registrar to any federal, state, county, or municipal government agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in (a) above. Such verifications shall be on forms prescribed and furnished by the State Registrar or on forms furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it shall prove in the best interests of the State. Such verifications may only be used for the official purposes of the requesting agency.

(d) When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, the State Registrar shall have authority to withhold the issuance of a certified copy of such certificate until a court determination of the facts has been made.

KEY: vital statistics, copy process
1989 26-2-26
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-15. Fees.
R436-15-1. Fees for Copies and Searches.

(1) No request for a vital statistics record shall be searched and certified copy issued until the required fee is received, unless specific approval has been obtained from the State Registrar or is otherwise provided for by statute or rule.

(2) The vital statistics fee schedule shall be approved by the Utah legislature as part of the Department of Health's annual budget.

KEY: vital statistics, fees
1989 26-1-6
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-16. Violation of Rules.
R436-16-1. Penalties.

The penalties for violation of rules R436-1 through R436-15 are provided in Sections 26-23-3 through 26-23-8.

KEY: vital statistics, penalties
1993 26-23-3 through 26-23-8
Notice of Continuation November 21, 2007

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-17. Review and Approval of Research Requests.
R436-17-1. Purpose and Authority.

(1) This rule sets forth procedures for the review and approval of research requests received by the Bureau of Vital Records and Health Statistics.

(2) Authority for this rule is found in Sections 26-2-3 and 26-2-22.

R436-17-2. Definitions.

In addition to the definitions in Section 26-2-2, "Institutional Review Board" or "IRB" means a multi-disciplinary committee which reviews proposed research involving human subjects.

R436-17-3. Requests for Access to Records for Research.

(1) If the research does not involve the use of any personal identifying information from the vital records, the State Registrar shall provide the researcher with the requested statistical information upon receipt of the written request and payment of the associated costs.

(2) If the research involves the use of personal identifying information, the request must be in writing and must be signed by the researcher. In addition:

(a) The request must outline the research protocol to be used.

(b) If the research involves a follow-back or follow-up study, the request must describe who is to be contacted, how, by whom, and what questions will be asked. If a survey is planned, a copy of the survey must be submitted. Approval by an Institutional Review Board must be included with the request.

(c) If the research involves linking data files, the variables to be used to determine the match must be identified.

(d) The researcher and all persons who may have access to the identifying information in the vital records shall sign a Researcher's Confidentiality Agreement, which is available from the Bureau of Vital Records and Health Statistics.

(e) The researcher may not use or allow other persons to use the vital records information for any purpose other than the approved research.

(f) The State Registrar shall review all research requests upon receipt at which time one of the following outcomes may occur:

(i) The request is approved and the researcher is notified in writing of the approval and of the associated costs.

(ii) The request is given tentative approval and the researcher:

(A) is notified in writing of the approval and associated costs;

(B) discusses and resolves technical concerns identified by the State Registrar. (iii) The request is not approved and the researcher is:

(A) notified in writing the reasons for the disapproval;

(B) notified of the areas of concern with the request;

(C) allowed to address the areas of concern and resubmit the request.

(D) notified that the decision to deny may be appealed to the Executive Director of the Department of Health.

R436-17-4. Approval by Institutional Review Board.

(1) The State Registrar may require approval by an Institutional Review Board before authorizing a researcher access to the vital records.

(2) The IRB shall deny a research proposal if:

(a) it violates any federal or state law;

(b) the risks to the subjects outweighs the benefits to them or society;

(c) unnecessary risks are created;

(d) selection of subjects is inequitable;

(e) procedures for obtaining and documenting informed consent are inadequate;

(f) payment or other offered inducements are likely to influence subjects' judgment;

(g) the study is poorly or improperly designed such that meaningful conclusions cannot be derived.

R436-17-5. Confidentiality Requirements.

Researchers shall abide by the confidentiality requirements specified in the Researcher's Confidentiality Agreement. Failure to observe the confidentiality requirements shall result in the loss of privilege to access vital records for research purposes and may also result in civil court action pursuant to Section 26-23-5. Vital records information may only be used for the designated research and must be destroyed at the conclusion of the study, or returned to the State Registrar. If the researcher destroys the vital records the State Registrar shall be informed in writing. The information may not be used for other research unless authorized by the State Registrar.

KEY: vital statistics, research
1993 26-2-3
Notice of Continuation November 21, 2007 26-2-22

R495. Human Services, Administration.
R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.
R495-861-1. Requirements for Local Discretionary Social Services Block Grant Funds.

A. Social Services Block Grant funds allocated to local governments by the Legislature are contracted to either counties or associations of government. These funds must be used to provide services to eligible persons as described in the Utah State Social Services Block Grant Plan. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds shall be allocated to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of $54,000.00.

2. Each area with less than 150,000 population will receive a base of $34,000.00.

3. The remainder of the money will be allocated based on the percentage each areas' population is of the state population.

C. Each local government shall be required to provide a 25 percent match for Discretionary Social Services Block Grant funds.

KEY: social services, match requirement*
1991 **62A-1-114**
Notice of Continuation November 29, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-1. General Provisions.
R501-1-1. Authority and Purpose.

1. This Rule is authorized by Section 62A-2-101, et seq.

2. This Rule clarifies the standards for:

a. approving or denying a human services program application, or

b. approving, extending, conditioning, denying, suspending, or revoking a human services program license.

3. This Rule clarifies the standards for inspecting, monitoring, and investigating a human services program.

4. This Rule clarifies the standards for approving or denying a variance to the Human Services Administrative Rules, Title R501, regarding the licensing of human services programs.

R501-1-2. Definitions.

1. "Applicant" means a person who submits an application to the Office of Licensing to obtain a license to operate a human services program.

2. "Certified local inspector" is defined in Section 62A-2-101.

3. "Child" is defined in Section 62A-2-101.

4. "Client" is defined in Section 62A-2-101.

5. "Human services program" is defined in Section 62A-2-101.

6. "Initial License" means the license issued to operate a human services program during the program's first year of operation.

7. "Licensee" means a person with a current, valid license to operate a human services program, issued by the Office of Licensing.

8. "Local government" is defined in Section 62A-2-101.

9. "Person" includes an individual, agency, association, partnership, corporation, or governmental entity.

10. "Probationary License" means a temporary initial license issued to operate a new human services program during the period of time that the Office of Licensing designates for the program to transition from substantial compliance to full compliance with licensing requirements.

11. "Regular business hours" is defined in Section 62A-2-101.

12. "Residential Treatment" is defined in Section 62A-2-101.

13. "Renewal License" means the license issued to operate a human services program after the program's first year of operation.

14. "Substantial compliance" means a human services program presently conforms to all licensing requirements with the exception of minor requirements that do not create a risk of harm to a child or vulnerable adult. Examples of minor requirements that do not create a risk of harm to a child or vulnerable adult include, but are not limited to, individual staff or client files in a residential treatment program that has not yet provided services, individual staff or client files in a child placing agency that has not yet provided services, or completion of training in a kinship foster care placement.

15. "Variance" means a temporary deviation from an administrative rule.

16. "Vulnerable Adult" is defined in Section 62A-2-101.

R501-1-3. Licensing Procedure.

1. Application for Initial License.

A person seeking an initial license to operate a human services program shall submit:

a. an application on the forms provided by the Office of Licensing;

b. the licensing fee required of a new program for the category of human services program license sought;

c. a completed background screening application and consent form, and all required identifying information, in accordance with R501-14, for each adult associated with the proposed human services program;

d. the applicant's proposed policy and procedure manual;

e. documentation verifying compliance with all local government zoning, health, fire, and business requirements; and

f. for residential treatment programs, a copy of the notice of its intent to operate a residential treatment program and proof of service, in accordance with Section 62A-2-108.2.

2. Application for Renewal License.

A person seeking renewal of a license to operate a human services program shall submit:

a. an application on the form provided by the Office of Licensing;

b. the licensing fee required for the category of human services program;

c. verification of current background screening approval, in accordance with R501-14, for each adult associated with the human services program;

d. a copy of all modifications that have been made to the licensee's policy and procedure manual since the previous year's licensure;

e. documentation verifying current compliance with all local government zoning, health, fire, and business requirements; and

f. for residential treatment programs, a copy of the notice of its intent to operate a residential treatment program and proof of service, in accordance with Section 62A-2-108.2.

g. the application for renewal of a license shall be submitted no less than thirty days and no more than sixty days prior to the expiration date of the current license.

3. An application and required documentation that are not legible, complete, dated and signed shall be returned to the applicant without further action.

4. On-Site Licensing Review

a. An applicant for an initial license shall permit the Office of Licensing to conduct an unlimited on-site evaluation of the physical facility and grounds, and to interview persons associated with the proposed program to verify compliance with all licensing requirements.

i. The Office of Licensing shall approve an application for an initial human services program license only after verifying full compliance with all licensing requirements.

ii. The Office of Licensing may approve a probationary license only after verifying substantial compliance with licensing requirements.

A. The Office of Licensing shall include an expiration date on a probationary license, which shall not exceed 6 months from the date of issue.

B. A probationary licensee that fails to achieve full compliance with licensing requirements prior to the expiration of the probationary license shall not be granted an extension, and shall not accept any fees, entering any agreements to provide client services, or provide any client services.

C. A probationary licensee that is not granted an initial license may submit a new application for an initial license 3 months after the expiration of the probationary license.

iii. The Office of Licensing shall deny an application for an initial human services program license when substantial compliance with all licensing requirements cannot be verified.

iv. The Office of Licensing shall permit an applicant for an initial human services program license to withdraw the application at any time prior to denying the application when an applicant requests additional time to demonstrate compliance with all licensing requirements.

A. An application that has been voluntarily withdrawn by an applicant may be resubmitted, within six months of the date of withdrawal, for reconsideration without payment of

additional fees.

b. The Office of Licensing shall conduct a minimum of one annual on-site review of each human services program site.

i. The Office of Licensing shall approve an application for a human services program license renewal only after verifying full compliance with all licensing requirements.

ii. The Office of Licensing shall deny an application for a human services program license renewal when full compliance with all licensing requirements cannot be verified.

iii. The Office of Licensing may extend the current license of a human services program in accordance with this rule.

A. A renewal license may be extended for up to sixty days past the current license expiration date if the Office of Licensing determines that the human services program is in substantial compliance with licensing requirements.

B. A notice of extension shall identify the extension expiration date and the requirements that the human services program must comply with to achieve full compliance.

C. A human services program that fails to achieve full compliance with licensing requirements prior to the expiration of the extension shall not be granted additional extensions.

D. The Office of Licensing shall deny the renewal application of a human services program that fails to achieve full compliance with licensing requirements prior to the expiration of an extension.

c. The Office of Licensing shall complete a written monitoring report or a checklist identifying areas of compliance and non-compliance with licensing requirements after each on-site review.

5. The license shall state the name and site address of the human service program facility, category of service, maximum consumer capacity, and the start date and expiration date.

6.a. A license that has expired is void.

b. A license expires at midnight one year after the date it was issued, unless:

i. the license states an earlier expiration date;

ii. the license has been extended in accordance with this rule;

iii. the license has been revoked by the Office of Licensing; or

iv. the license has been relinquished to the Office of Licensing by the licensee.

7.a. A licensee shall not exceed the licensed maximum client capacity indicated on the license issued by the Office of Licensing.

b. A licensee seeking to increase the maximum client capacity of a license shall submit an application for a renewal license in accordance with this rule.

8.a. A licensee shall not provide client services at a new site or change the services it provides without first obtaining a new license issued by the Office of Licensing.

b. A licensee seeking to change a human services program's site address or services provided shall submit an application for a new license in accordance with this rule.

9. A person with an expired license wishing to operate a human services program shall submit an application for a new license in accordance with this rule.

10. A license is deemed void when the human services program has a change of ownership, management, administration, policies, or site address.

a. A human services program that has a change of ownership or management shall apply for a renewal license in accordance with this rule.

b. A human services program that has a change of administration, policies, or site address shall apply for an initial license in accordance with this rule.

R501-1-4. Fees.

1. The Office of Licensing shall assess and collect licensing fees in accordance with Sections 62A-2-106 and 63-38-3.2.

a. An assessed fee shall not be transferred, prorated, reduced, waived, or refunded.

b. No licensing fee shall be assessed on a foster home or on a Division of the Department of Human Services.

2. The Office of Licensing shall not perform an on-site review until the applicant pays the assessed licensing fee in full.

3. Fees shall be calculated according to the maximum licensed client capacity of the human services program, and not according to the number of clients served in the program.

a. A human services program with a valid, current license that intends to increase its maximum licensed client capacity shall submit an application for a renewal license and shall be assessed a renewal application fee according to the increased maximum client capacity.

4. Fees shall be assessed for each program site of a human services program.

a. A human services program with more than one building at one site may choose to have its fees assessed:

i. so that one license will be issued for each on-site building; or

ii. so that one license will be issued for each site.

b. A human services program with a valid, current license that intends to provide services at an additional site shall submit an application for an initial license at the additional site.

i. A human services program with a valid, current license that proposes to provide identical services at additional site shall be assessed a renewal application fee.

ii. A human services program with a valid, current license that will not provide identical services at an additional site shall be assessed an initial application fee.

5. Fees shall be assessed for each category of human services program offered at a program site.

a. A human services program with a valid, current license that intends to provide additional services at the licensed site shall submit an application for a renewal license and shall be assessed a renewal application fee.

R501-1-5. Monitoring.

1. The Office of Licensing shall investigate reports of unlicensed human services programs.

a. An unlicensed human services program that fails to submit an application and become licensed shall be referred to the Offices of the Attorney General and the appropriate County Attorney for prosecution.

2. The Office of Licensing shall investigate complaints regarding a licensed human services program.

a. A certified local inspector may investigate complaints regarding a residential treatment program in accordance with Section 62A-2-108.3 and R501-4

3. Unannounced administrative inspections may be conducted during regular business hours.

4. The Office of Licensing shall document violations of administrative rules or statutes

5. The Office of Licensing shall provide written notification to the human services program of violations of administrative rules or statutes and any sanctions imposed.

R501-1-6. Corrective Action Plans.

1. The Office of Licensing may require a human services program to submit a written corrective action plan in response to a written notification of its violations of administrative rules or statutes.

2. A human services program shall submit a written corrective action plan to the Office of Licensing within ten calendar days of receiving written notification of its violations of administrative rules or statutes.

3. The written corrective action plan shall include the

following:

a. a statement of each violation as identified by the Office of Licensing,

b. a detailed description of how the human services program will correct each violation and prevent additional violations of administrative rules or statutes;

c. the date by which the human services program will achieve complete compliance with administrative rules or statutes; and

d. the signature of all owners and managers of the human services program.

4. The Office of Licensing shall issueIa Notice of Agency Action imposing sanctions for a human service program's violations of administrative rules or statutes if the program fails to submit a written corrective action plan in compliance with this rule.

5. The Office of Licensing shall review the submitted written corrective action plan and:

a. inform the human services program that the written corrective action plan is approved; or

b. inform the human services program that the written corrective action plan fails to satisfy the requirements of this rule.

i. The Office of Licensing may permit a human services program to amend its written corrective action plan within 5 additional calendar days to satisfy the requirements of this rule.

6. The Office of Licensing shall issue a Notice of Agency Action imposing sanctions for a human services program's violations of administrative rules or statutes if the program fails to comply with a written corrective action plan approved by the Office of Licensing.

7. A human services program shall post each approved corrective action plan and each Notice of Agency Action where it can be easily reviewed by clients, parents or guardians of clients, and visitors.

a. Each approved corrective action plan and each Notice of Agency Action shall remain posted until the Office of Licensing issues written confirmation that the program has achieved compliance with administrative rules and statutes.

R501-1-7. License Violation.

1. An applicant shall not accept any fees, enter any agreements to provide client services, or provide any client services until after receiving written confirmation that the Office of Licensing has approved and issued a license to provide those services.

2. The Office of Licensing may exercise its professional judgment and deny, condition, suspend, or revoke a license for any violation of the administrative Rules or local, state, or federal law.

3. The Office of Licensing shall issue a written notice of agency action when a license sanction is imposed. The notice of agency action shall identify each violation and describe the factual basis underlying each violation.

4. The Office of Licensing may place a license on conditional status. A conditional status allows a program that is in the process of correcting administrative rule violations to continue operation subject to conditions established by the Office of Licensing.

5.a. A human services program that has had its license suspended is prohibited from providing any services to clients until after the suspension period has expired.

b. A human services program that has had its license expire during the suspension period shall be required to submit an application for an initial license after the suspension period has expired and obtain a new license prior to providing any services to clients.

6. A human services program that has had its license revoked is prohibited from providing any services to clients until after a new license is issued in accordance with Section 62A-2-113.

R501-1-8. Due Process.

1. A notice of agency action shall inform the applicant or licensee of the right to appeal in accordance with Administrative Rule 497-100 and Section 63-46b-0.5, et seq.

2. A licensee shall not accept any new clients while an appeal is pending.

R501-1-9. Variances.

1. A licensee shall not deviate from any administrative rule without first receiving written approval of a specific variance request signed by the Director of the Office of Licensing or the Director's designee.

2. The Director of the Office of Licensing, or the Director's designee, may grant a variance to the administrative rules of the Office of Licensing, if the Director or the Director's designee determines that a variance:

a. is in the best interests of the client; and

b. may be granted without compromising any health and safety requirements.

3. The licensee must submit a written request for a variance to the licensing specialist. A request for a variance shall specifically describe:

a. the rule for which variance is requested;

b. how the licensee will ensure the best interests of the client will be maintained;

c. what procedures will be implemented to ensure the health and safety of all clients; and

d. the proposed variance expiration date.

4. The licensing specialist shall review the written request for a variance and forward it to the Director or the Director's designee together with the licensing specialist's recommendations to approve, approve with modifications, or deny the request.

5. The Office of Licensing shall notify the licensee of the approval, approval with modifications, or denial of the of the variance, in writing, within 30 days.

R501-1-10. Abuse or Neglect, or Exploitation.

1. The Office of Licensing shall immediately notify the appropriate investigative or law enforcement agency of any allegations or evidence of abuse, neglect, or exploitation of any child or vulnerable adult.

R501-1-11. Compliance.

Any licensee that is in operation of the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.

KEY: licensing, human services
October 18, 2005 62A-2-101 et seq.
Notice of Continuation November 21, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-2. Core Rules.
R501-2-1. Definition.

Core Rules are required for Human Service Programs, listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

A. the administration and maintenance of client and service records;

B. staff qualifications; and

C. staff to client ratios.

R501-2-2. Program Administration.

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,

2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,

3. description of the services provided,

4. the population to be served,

5. fee policy,

6. participation of consumers in activities unrelated to treatment plans, and

7. program policies and procedures which shall be submitted prior to issuance of an initial licensing.

B. Copies of the above statements shall be available at all times to the Office of Licensing upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,

2. maintenance of complete, accurate and accessible records, and

3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve minors or vulnerable adults shall submit identifying information for background screening of all adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted where it is easily read by consumers, staff and visitors. See also R501-1-5-F. The program shall post Civil Rights License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

L. Programs providing foster or proctor care services shall adhere to the following:

1. approve homes that comply with Foster Care Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

2. foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and training plan.

3. the agency must have a procedure to revoke or deny home approval.

4. the agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

5. planning, with participation of the child's legal guardian for care and services to meet the child's individual needs.

6. obtaining, coordinating and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

7. providing ongoing supervision of foster parents to ensure the quality of the care they provide.

R501-2-3. Governance.

A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The governing body's responsibilities shall include the following:

1. to ensure program policy and procedures compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office of Licensing within 30 days of changes in program administration and purpose,

4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",

5. to ensure that the program has adequate staffing as identified on the organizational chart,

6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and

7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews it's license to complete the necessary student forms including youth education forms.

B. The governing body shall be one of the following:

1. a Board of Directors in a non-profit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owner or owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of

Licensing, to include the following:
1. attendance,
2. date,
3. agenda items, and
4. actions.

R501-2-4. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

R501-2-5. Record Keeping.

The program shall have, a written record for each consumer to include the following:

A. Demographic information to include Medicaid number as required,

B. Biographical information,

C. Pertinent background information, including the following;

1. personal history, including social, emotional, psychological and physical development,
2. legal status,
3. emergency contact with name, address and telephone number, and
4. photo as needed.

D. Health records of a consumer including the following:
1. immunizations, for children only,
2. medication,
3. physical examinations, dental, and visual examinations, and
4. other pertinent health records and information.

E. Signed consent forms for treatment and signed Release of Information form,

F. Copy of consumer's individual treatment or service plan,

G. A summary of family visits and contacts, and

H. A summary of attendance and absences.

R501-2-6. Direct Service Management.

A. Direct service management, as described herein, is not applicable to social detoxification. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:
1. legal status,
2. age and sex of consumer,
3. consumer needs or problems best addressed by program,
4. program limitations, and
5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:
1. appropriate intake process,
2. age groupings as approved by the Office of Licensing,
3. pre-placement requirements,
4. self-admission,
5. notification of legally responsible person, and
6. reason for refusal of admission, to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:
1. rules of program,
2. consumer and family expectations,
3. services to be provided and cost of service,
4. authorization to serve and to obtain emergency care for consumer,
5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and
6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable according to the following.

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:
a. findings of intake evaluation and assessment,
b. measurable long and short term goals and objectives,
1) goals or objectives clearly derived from assessment information,
2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,
3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and
4) evidence of family involvement in treatment plan, unless clinically contraindicated,
c. specification of daily activities, services, and treatment, and
d. methods for evaluation,

3. Treatment plans
a. plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.

4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.

5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.

6. Treatment record entries shall include the following:
a. identification of program,
b. date and duration of services provided,
c. description of service provided,
d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and
e. documentation of review of consumer's record to include the following:
1) signature,
2) title,
3) date, and
4) reason for review.

7. Transfer and Discharge
a. a discharge plan shall identify resources available to consumer.
b. the plan shall be written so it can be understood by the consumer or legally responsible party.
c. whenever possible the plan shall be developed with consumers participation, or legally responsible party if necessary. The plan shall include the following:
1) reason for discharge or transfer,
2) adequate discharge plan, including aftercare planning,
3) summary of services provided,
4) evaluation of achievement of treatment goals or

objectives,

5) signature and title of staff preparing summary, and

6) date of discharge or transfer.

d. The program shall have a written policy concerning unplanned discharge.

8. Incident or Crisis Intervention records

a. The program shall have written policies and procedures which includes: reporting to program manager, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches and other situations or circumstances affecting the health, safety, or well-being of consumers.

b. records shall include the following:

1) summary information,

2) date, time of emergency intervention,

3) action taken,

4) employees and management responsible and involved,

5) follow up information,

6) list of referrals,

7) signature and title of staff preparing report, and

8) records shall be signed by management staff.

c. the report shall be maintained in individual consumer records.

d. when an incident involves abuse, neglect, serious illness, violations of the Provider Code of Conduct or death of a consumer, a program shall:

1) notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.

2) a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.

R501-2-7. Behavior Management.

A. The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:

1. definition of appropriate and inappropriate behaviors of consumers,

2. acceptable staff responses to inappropriate behaviors, and

3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually.

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:

a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.

b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time-out or seclusion.

c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.

d. Any one time-out or seclusion shall not exceed 4 hours in duration.

e. Staff is required to maintain a visual contact with a child in time-out or seclusion at all times.

f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time-out or seclusion shall follow the safety plan.

g. A child placed in time-out or seclusion shall not be in possession of belts, matches, weapons, or any other potentially harmful objects or materials that could present a risk or harm to the child.

2. Time-out or seclusion areas shall comply with the following:

a. Time-out or seclusion rooms shall not have locking capability.

b. Time-out or seclusion rooms shall not be located in closets, bathrooms, or unfurnished basements, attic's or locked boxes.

c. A time-out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time-out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.

d. All time-out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department

G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.

R501-2-8. Rights of Consumers.

A. The program shall have a written policy for consumer rights to include the following:

1. privacy of information and privacy for both current and closed records,

2. reasons for involuntary termination and criteria for re-admission to the program,

3. freedom from potential harm or acts of violence to consumer or others,

4. consumer responsibilities, including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity,

9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional,

10. a list of people, whose visitation rights have been restricted through the courts,

11. the right to send and receive mail providing that security and general health and safety requirements are met,

12. defined smoking policy in accordance with the Utah Clean Air Act, and

13. statement of maximum sanctions and consequences,

reviewed and approved by the Office of Licensing.

B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

A. The program shall have written personnel policies and procedures to include the following:

1. employee grievances,
2. lines of authority,
3. orientation and on-going training,
4. performance appraisals,
5. rules of conduct, and
6. sexual and personal harassment.

B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or designated management person shall be available at all times during operation of program.

C. The program shall have a personnel file for each employee to include the following:

1. application for employment,
2. applicable credentials and certifications,
3. initial medical history if directed by the governing body,
4. tuberculin test if directed by the governing body,
5. food handler permit, where required by local health authority,
6. training record,
7. annual performance evaluations,
8. I-9 Form completed as applicable,
9. comply with the provisions of R501-14 and R501-18 for background screening, and
10. a signed copy of the current Department of Human Services Provider Code of Conduct.

D. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.

E. The program shall employ or contract with trained or qualified staff to perform the following functions:

1. administrative,
2. fiscal,
3. clerical,
4. housekeeping, maintenance, and food service,
5. direct consumer service, and
6. supervisory.

F. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

G. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.

H. The governing body shall ensure that all staff are certified and licensed as legally required.

I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.

J. The program shall provide interpreters for consumers or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.

K. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.

L. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:

1. direct supervision by a program staff,
2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
3. background screening,
4. a record maintained with demographic information, and
5. signed copy of the current Department of Human Services Provider Code of Conduct.

M. Staff Training

1. Staff members shall be trained in all policies of the program, including the following:
   a. orientation in philosophy, objectives, and services,
   b. emergency procedures,
   c. behavior management,
   d. current program policy and procedures, and
   e. other relevant subjects.
2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross.
3. Staff shall have current food handlers permit as required by local health authority.
4. Training shall be documented and maintained on-site.

R501-2-10. Infectious Disease.

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

R501-2-11. Emergency Plans.

A. The program shall have a written plan of action for disaster and casualties to include the following:

1. designation of authority and staff assignments,
2. plan for evacuation,
3. transportation and relocation of consumers when necessary, and
4. supervision of consumers after evacuation or relocation.

B. The program shall educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.

C. The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

R501-2-12. Safety.

A. Fire drills in non-outpatient programs, shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to an operable 24-hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility such as recommended by American Red Cross.

D. All persons associated with the program who have access to children or vulnerable adults and who also have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

R501-2-13. Transportation.

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle, used to transport

consumers, there shall be emergency information which includes at a minimum, the name, address and phone number of the program and an emergency telephone number.

C. The program shall have means, or make arrangement for, transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by American Red Cross.

R501-2-14. Categorical Rules.

In addition to Core Rules, Categorical Rules are specific regulations which must be met for the following:

A. Child Placing Adoption Agencies R501-7,

B. Day Treatment R501-20,

C. Intermediate Secure Treatment Programs for Minors R501-16,

D. Outdoor Youth Programs R501-8,

E. Outpatient Treatment R501-21,

F. Foster Care R501-12,

G. Residential Treatment R501-19,

H. Residential Support R501-22,

I. Social Detoxification R501-11 and

J. Assisted Living for DSPD Residential R710.

R501-2-15. Single Service Program Rules.

Core Rules of the Office of Licensing do not apply to single service programs.

Single services program Rules are the regulations which must be met for the following:

A. Adult Day Care, which Rules are found in R501-13,

B. Adult Foster Care, which Rules are found in R501-17.

KEY: licensing, human services
March 17, 2004 62A-2-101 et seq.
Notice of Continuation November 21, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.

A. This rule is authorized under Section 62A-2-106.

B. This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.

A. "Adoption" is defined in Section 78-30-16.

B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.

C. "Adoption Services" means evaluating, advising, or counseling children, birth parents or adoptive families, placing children for adoption; monitoring or supervising placements until the adoption is finalized; conducting adoption studies or preparing adoption reports; or arranging for foster care.

D. "Birth Parent" is defined in Section 78-30-16.

E. "Child placing" means receiving, accepting, or providing custody or care for a child for the purpose of finding a person to adopt the child or placing a child in a home for adoption.

F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.

G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

I. "Genetic and Social History" is defined in Section 78-30-16.

J. "Health History" is defined in Section 78-30-16.

K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.

L. "Legal risk placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

M. "Mental Health Therapist" is defined in Section 58-60-102.

N. "Sliding Scale" means an established fee schedule that varies according to an individual's annual income.

O. "Special needs" is defined in Section 62a-4a-902(2).

P. "Unmarried biological father" is defined in Section 78-30-4.11.

R501-7-3. Legal Requirements.

A. In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-2-5, R501-2-8 through R501-2-14, R501-14, R501-18; Title 58, Chapter 60; title 62A, Chapters 2 and 4a: Section 76-7-203; Title 78; Chapters 3a, 30, 45a, and 45e; and other applicable local, State and Federal laws.

B. Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

C. A child placing adoption agency shall not:

a. delay or deny the placement of a child or the opportunity to become an adoptive parent on the basis of race, color, ethnicity, cultural heritage, or national origin. A child placing adoption agency shall comply with all State and Federal laws regarding discrimination.

D. A child placing adoption agency shall be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction places legal responsibility with another party, in accordance with Section 78-30-4.22.

E. A child placing adoption agency which serves Indian children shall comply with the Indian Child Welfare Act.

F. A child placing adoption agency that provides foster care shall comply with R501-12.

H. A child placing adoption agency shall comply with the Interstate Compact for Placement of Children, in accordance with Section 62A-4a-701 et seq.

R501-7-4. Administrative Requirements.

A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

1. Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time, paid, professional experience in a licensed child placing adoption agency.

2. A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

3. An Executive Director who is licensed in this state as a mental health therapist, complies with the Utah Mental Health Professional Practice Act, and has at least one year of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, but may not supervise more than four staff and volunteers who provide adoption services to clients.

B. Individuals who provide adoption services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act and shall comply with the Utah Mental Health Professional Practice Act.

C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes no later than five business days after the change.

D. A child placing adoption agency shall provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

1. dissolving or ceasing to provide child placing services,

2. adding or eliminating in-state, out-of-state, special needs, or international services, or

3. changing ownership or name.

R501-7-5. Ethical Conduct.

A. A child placing adoption agency shall:

1. not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

2. not provide or accept any payment or other considerations for any referral;

3. work only with agencies, entities or individuals that are authorized to provide child placing adoption services by the laws of this state or the jurisdiction in which that agency, entity or individual performs child placing adoption services;

4. not permit its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the birth parents and the adoptive parents unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to select independent attorneys and other service providers, and shall not charge clients fees for services that clients obtain independently; and

6. not refer or steer any individual to any private practice

in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing any potential conflicts of interest and informing said individuals that they are free to select independent service providers.

B. The members of the governing body of a child placing adoption agency shall disclose, in writing, to the chairperson of the governing body, any direct or indirect financial interest in the agency.

C. The child placing adoption agency, its board members, volunteers, employees, or agents shall not solicit donations from an adoptive family that is under consideration for placement of a child. A generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule.

D. The child placing adoption agency, its board members, volunteers, employees, or agents shall not accept donations from an adoptive family that is under consideration for placement of a child.

R501-7-6. Fees.

A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents.

1. The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.

2. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.

3. A child placing adoption agency shall identify which fees may be non-refundable.

B. A child placing adoption agency may charge adoptive parents an agency fee, which shall include all administrative and professional services provided on behalf of the adoptive parents, including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training.

C. A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.

1. The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.

2. A child placing adoption agency shall not charge adoptive parents for the travel expenses of any person other than the birth mother.

3. A child placing adoption agency shall not charge the adoptive parents for the living expenses of any person other than the birth parents.

4. A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.

D. The agency shall maintain an itemized accounting of the actual expenditures made on behalf of a birth mother. The accounting shall be verified and signed by the agency and adoptive parents, and filed with the court and the Office of Licensing in accordance with Section 78-30-15.5.

1. The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.

2. The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.

E. The agency may delegate the responsibility for a child's care, maintenance, and support to the adoptive applicant only when the applicant has received the child into the applicant's home, in accordance with Section 78-30-4.22.

F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy unless she is first convicted of fraud.

R501-7-7. Documentation.

A. A child placing adoption agency shall maintain a policy and procedure manual describing how it shall comply with all licensing rules and local, state and federal laws applicable to the type of services offered.

B. A child placing adoption agency shall maintain a policy and procedure manual demonstrating how it shall:

1. train and supervise employees and volunteers;

2. identify a child who may be available for adoption;

3. identify or refer a person who is considering relinquishing a child for adoption;

4. provide services in cases where the agency does not obtain legal custody of a child;

5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;

6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;

7. inform birth parents and adoptive parents of their rights and responsibilities in writing;

8. monitor who has legal and physical responsibility for the child at all times;

9. secure the necessary relinquishments and facilitate the termination of parental rights;

10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;

11. obtain a background study on a child or a home study on a prospective adoptive parent;

12. evaluate prospective adoptive parents;

13. process appeals of home study denials;

14. assess the best interests of a child and the appropriate adoptive placement for the child;

15. monitor a case post-placement until the adoption is final;

16. ensure the child is receiving all necessary services prior to finalization of adoption;

17. assume custody and provide any needed services for the child when necessary because of disruption;

18. arrange to provide foster care prior to placing the child in an adoptive home;

19. preserve the confidentiality of client files;

20. respond to requests for information from birth families, adoptees, adoptive families, and others;

21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

22. enable record retrieval by individuals with a right to access them.

C. A child placing adoption agency shall provide documentation demonstrating its compliance with each subsection in R501-7-7(B).

D. A child placing adoption agency shall maintain a case file for the birth parents, and the prospective adoptive parents, and for each child who is more than 90 days old at the time of placement or who has been in the legal custody of someone other than the birth mother. Each case file shall cross-reference related files. Each case file shall include:

1. application for service;

2. all studies and evaluations, whether or not finalized, including but not limited to those required by Section 78-30-

3.5;

3. needs assessment;

4. case notes describing services provided;

5. the individual's adjustments, interactions and relationships;

6. original or certified copies of government and religious birth records;

7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;

8. original or certified copies of decree of termination of birth mother's and birth father's rights;

9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;

10. certified copies of death certificates, if any, of birth parents;

11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;

12. waiver of confidentiality or release of information authorization, if applicable;

13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;

14. current and historical physical, psychological, genetic and developmental health information;

15. original or certified copy of the order of adoption; and

16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;

F. All case files shall be retained for a minimum of 100 years from the date the case is closed.

G. All adoption records shall be confidential and shall be maintained in a locked file when not in active use. Adoption records shall be accessible only by authorized agency employees. No information shall be shared with any person without the appropriate consent forms, except as required by law.

H. A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-8. Services for Birth Parents.

A. Child placing adoption agencies shall offer counseling sessions prior to consent or relinquishment. Prior to consent or relinquishment, the agency shall inform birth parents that:

1. their decision to sign the consent or relinquishment must be voluntary; and

2. their decision is permanent and may not be revoked after the consent or relinquishment is signed.

B. Birth parents shall be provided complete and accurate information and their decision to consent or relinquish, or not to consent or relinquish their child shall be supported.

1. Child placing adoption agencies shall not induce or persuade a birth parent to consent to adoption or to relinquish a child through duress, undue influence, misrepresentation, or deception.

C. A child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78-30-4.19.

D. Birth parents shall be assisted in considering whether they want to disclose their identity to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

E. Birth parents shall be offered non-identifying information on the potential adoptive parents, such as age, physical characteristics, educational achievement, family members, profession, nationality, health, and reason for adopting.

F. A child placing adoption agency shall inform birth parents that a detailed, non-identifying health history and a genetic and social history of the child shall be provided to the adoptive parents in accordance with Section 78-30-17, and shall inform birth parents of Utah's Mutual Consent Voluntary Adoption Registry, Section 78-30-18.

G. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with birth parents and shall also be clearly stated in writing on the birth parents' application for services forms.

H. A child who has already established some identification with a particular religious faith shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

I. A child placing adoption agency shall initiate proceedings to terminate or determine parental rights when required by Utah law.

J. Child placing adoption agencies that provide housing for expectant birth mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

2. housing is clean, well-maintained and adequately furnished;

3. birth mothers shall have private bedrooms;

4. laundry equipment and supplies shall be available; and

5. adequate nutritious food, or resources to obtain food, is available.

K. Child placing adoption agencies that provide or pay for birth mothers' transportation to the State of Utah shall also ensure that the birth mothers' return transportation to their home state is provided, regardless of whether the birth mother decides to relinquish parental rights.

L. The placement decision shall be in writing, signed by the child placing adoption agency and the birth parents, and a copy shall be maintained in the case record of the birth parents, the adoptive parents, and the child.

R501-7-9. Services for Children.

A. After the birth parents determine that adoption is the best plan for their child, an assessment shall be made within 30 days, or within the timeframe ordered by the court, to obtain information to assist in the placement process.

B. A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

C. The assessment shall be used to assist prospective adoptive families to make their decision about the child and birth family.

D. A complete developmental history of the child shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, nurses, psychologists, and other consultants shall be included. The developmental history shall include:

1. birth and health history, and all evaluations;

2. descriptions of fine and gross motor skills, social, emotional, and cognitive development;

3. the child's adaptation to previous living experiences and

situations;

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences;

5. a description of the child's cultural and ethnic background;

6. the child's language skills, educational records, talents and interests.

E. A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:

1. evaluation of the child that includes a correlation and interpretation of all available information, including but not limited to genetic and laboratory test results;

2. the medical care and immunizations received to date;

3. the nature and degree of any disability;

4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care.

F. Psychological testing for children should be used selectively and as a tool for observation and diagnosis.

G. A child placing adoption agency shall obtain information about the birth parents and their family backgrounds to:

1. provide the adoptive family with the birth family's medical, genetic, social, and mental health history;

2. provide the adoptive family with information about the talents, interests, and education of the birth parents;

3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and

4. identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family.

H. An interdisciplinary approach based upon the needs of the child is to be used in the selection of a placement either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee. A child placing adoption agency shall attempt to place siblings together.

I. A child shall be placed with the adoptive family at the earliest time possible after being freed for adoption.

J. A child's needs shall be assessed and a written plan shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and necessary services are provided.

K. A child awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.

1. A child placing adoption agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

2. A child awaiting adoptive placement shall be placed in a licensed group or residential treatment program when the child's needs can be met only in such a setting.

3. A child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

L. A child placing adoption agency shall have an individualized written adoptive placement plan for each child, which shall include:

1. providing the family and child services or service referrals after the adoption is finalized; and

2. the financial and social service responsibilities of each agency and individual.

M. A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.

1. A minimum of one supervisory visit shall be made prior to finalization of the adoption.

N. A child placing adoption agency having a child available for adoption who has not been placed within 60 days after relinquishment or after being determined to be available for adoption by the court shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges.

O. The needs of the child shall determine the amount of time taken to prepare the child for placement. The child shall be counseled regarding the adoptive placement and shall be protected from emotional disturbances associated with sudden separation from a known situation.

P. A child placing adoption agency shall develop a written plan with the child's current caregivers, the adoptive parents, and the child, to facilitate the child's transition into the adoptive family. The child's stated preferences shall be considered and if possible, honored.

R501-7-10. Services to Adoptive Parents.

A. Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.

B. A child placing adoption agency shall explain the adoption process and the birth parents' rights, including the status of the putative father, to the prospective adoptive parents.

C. A child placing adoption agency shall provide all available non-identifying information on children who may be available for adoptive placement and their birth families, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and genetic history, ethnic and cultural background, and prior placement history.

D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78-30-17, and Utah's Mutual Consent Voluntary Adoption Registry, Section 78-30-18.

E. A child placing adoption agency shall provide individual or group counseling to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child.

F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage the selection of a child whose needs the adoptive parents will be able to meet.

G. A child placing adoption agency shall prepare the child and adoptive family for the placement of the child in the home.

H. A child placing adoption agency shall inform each prospective adoptive parent that information about individual children in the custody of the state who are available for adoption may be obtained by contacting the Division of Child and Family Services or its internet site and shall provide a pamphlet prepared by the Division of Child and Family Services regarding adoption of children in the State's custody. The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:

1. Medicaid coverage for medical, dental, and mental health services;

2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and

3. training and ongoing support for the adoptive parents.

I. A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or

benefit, including but not limited to SSI, and shall coordinate with Division of Child and Family Services to apply for the subsidy or benefit.

J. A child placing adoption agency shall have written procedures and standards for the evaluation and approval or denial of applications from prospective adoptive parents.

K. The home study shall include:

1. interviews with the adoptive applicants, their children, and other individuals living in the home;

2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78-30-3.5;

3. written statements from references identified by the applicants. The applicants shall supply names of at least two non-related and one related individuals who shall provide information directly to the agency regarding the applicant's qualifications for parenting an adoptive child;

4. a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within six months prior to the date of the application; and

5. inspections of the home, to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.

L. The adoptive applicants shall be informed, in writing, and within five business days after the decision is made, as to the acceptance or the reasons for the denial of their home study. The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, and the right to request an additional evaluation, upon order of the court in accordance with Section 78-30-3.5.

M. A child placing adoption agency shall select applicants who:

1. are able to provide the continuity of a caring relationship;

2. are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

3. understand the needs of a child at various developmental stages.

N. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parents. This disclosure shall also be clearly stated in writing on the adoptive parents' application for services forms.

O. A child placing adoption agency shall verify that an applicant's income is sufficient to provide for a child's needs.

P. A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have first given their written consent, indicating that they have been fully informed of the specific risks involved.

R. Except when authorized by court order pursuant to Section 78-30-3.5(1)(b), a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

S. A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, including but not limited to:

1. providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups;

2. monitoring the child's adjustment and development;

3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and

4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.

T. The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems.

1. The first contact after placement shall take place within two weeks of placement.

2. A minimum of one face-to-face supervisory home visit shall take place before finalization.

U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

1. If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parents shall be entitled to appeal the removal decision. The agency shall provide the adoptive parents written notice of their right to appeal and the procedure for appeal.

R501-7-11. Intercountry Adoptions.

A. In addition to complying with all other rules regarding adoption, a child placing adoption agency that provides inter-country adoption services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and shall document that:

1. the child is legally freed for adoption in the country of origin;

2. information was provided to the adopting parents about naturalization proceedings.

B. A child placing adoption agency that provides intercountry adoption services shall:

1. establish an official and recorded method of fund transfers to avoid, when possible, the use of direct cash transactions to pay for adoption services in other countries;

2. identify, in writing and in advance of accepting any payment or signing any agreement, the total cost of providing adoption services in the child's country, including but not limited to the cost of care for the child, personnel, overhead, training, communication, obtaining any necessary documents, translation, the child's passport, notarizations and certifications, with disclosure of whether the prospective adoptive parents shall pay such costs directly in the child's country or indirectly through the child placing adoption agency;

3. itemize the costs, if any, of mandatory payments to child protection or child welfare programs in the child's country of origin, including but not limited to a description of:

a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;

b. the intended use of the payment; and

c. the manner in which the transaction will be recorded and accounted for;

4. provide all applicants with written policies governing refunds.

C. A child placing adoption agency that provides intercountry adoption services shall notify adoptive applicants

within ten business days when information is received that a foreign country is suspending its adoption program.

D. A child placing adoption agency that provides intercountry adoption services shall verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries.

KEY: licensing, human services, child placing
July 1, 2004 62A-2-101 et seq.
Notice of Continuation November 21, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-8. Outdoor Youth Programs.
R501-8-1. Outdoor Youth Programs.

(1) The Office of Licensing in the Department of Human Services, shall license outdoor youth programs according to standards and procedures established by this rule.

R501-8-2. Authority and Purpose.

(1) Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing shall license outdoor youth programs. Programs designed to provide rehabilitation services to adjudicated minors shall adhere to these rules as established by the Division of Juvenile Justice Services, in accordance with 62A-7-104-11.

R501-8-3. Definitions.

(1) In addition to terms defined and used in Section 62A-2-101(20), Utah Code:

(a) "Consumer" means the minor being provided the service by the program, not the parent or contracting agent that has enrolled the minor in the program.

(b) "Field Office" means the office where all coordination of field operations take place.

(c) "Administrative Office" means the office where business operations, public relations, and the management procedures take place.

R501-8-4. Administration.

(1) In addition to the following standards and procedures, all outdoor youth programs shall comply with R501-2, Core Standards.

(2) Records of enrollment of all consumers shall be on file at the field office at all times.

(3) Information provided to parents, community, and media shall be accurate and factual.

(4) Programs shall provide an educational component as determined by the Utah State Board of Education for consumers up to 18 years of age who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and cooperate with the local Board of Education.

(5) Programs which advertise as providing educational credit to consumers shall be approved by the Utah State Board of Education.

(6) The program shall have written procedures for handling any suspected incident of child abuse or Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct violation, including the following:

(a) a procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges filed and adjudicated,

(b) a procedure for ensuring that a director or member of the governing body involved in or suspected of abuse shall be relieved of their responsibility and authority over the policies and activities of the program, or any other youth program, as well as meet the sanctions as described in (a) above, until the investigation is completed or formal charges are filed and adjudicated, and

(c) a procedure for disciplining any staff member or director involved in an incident of child abuse or DHS Provider Code of Conduct violation, including termination of employment if found guilty of felony child abuse, or loss of position, including directorship if found guilty of misdemeanor child abuse.

(7) If any director or person in a management position is involved in or suspected of child abuse or neglect, the program shall submit to an extensive review by DHS or law enforcement officials to determine or establish the continued safe operation or possible termination of the program. The licensing review shall be completed within 72 hours.

(8) Failure to implement and comply with (6)(a) through (c), and (7). above will be grounds for immediate suspension or revocation of program license.

(9) Until charges of abuse, neglect or licensing violations are resolved, no license shall be issued to any program with owners, silent owners, or any staff management personnel that were prior owners or staff management personnel in a program against which the above charges were alleged.

(10) If charges result in a criminal conviction or civil or administrative findings that allegations were true, no license shall be issued to any program with owners, silent owners, or staff management personnel from the prior program.

R501-8-5. Program Requirements.

(1) Programs that operate in Utah and one or more other states shall meet the requirements for licensure as established for each of the states.

(2) There shall be a written plan for expedition groups, developed and approved by the program field director, and by the program executive director, and governing body, which shall not expose consumers to unreasonable risks.

(3) The program shall inventory all consumer personal items and shall return all inventoried items, except contraband, to the consumer following program completion. The consumer shall sign the inventory list at the time of inventory and again when items are returned.

(4) The Office of Licensing shall review and approve the program's training plan governing consequences for consumer conduct.

(5) Each consumer shall have clothing and equipment to protect the consumer from the environment. This equipment shall never be removed, denied, or made unavailable to a consumer. If a consumer refuses or is unable to carry all of his or her equipment, the group shall cease hiking, and reasons for refusal or inability to continue will be established and resolved before hiking continues. Program directors are responsible to train staff regarding this standard and to regularly monitor compliance. There shall never be a deprivation of any equipment as a consequence. Such equipment shall include the following:

(a) sunscreen; the program staff shall ensure appropriate consumer usage,

(b) insect repellent,

(c) with frame or no frame backpack weight to be carried by each consumer shall not exceed 20 percent of the consumer's body weight. If the consumer is required to carry other items, the total of all weight carried shall not exceed 30% of the consumer's body weight,

(d) personal hygiene items,

(e) female hygiene supplies,

(f) sleeping bags rated for the current seasonal conditions when the average nighttime temperature is 40 degrees F. or warmer,

(g) sleeping bags rated for the current seasonal conditions, shelter and ground pad for colder months when the average nighttime temperature is 39 degrees F. or lower, and

(h) basic clothing list to ensure consumer protection against seasonal change in the environment.

(6) The program shall provide consumers with clean clothing at least weekly and shall provide a means for consumers to bathe or otherwise clean their bodies a minimum of twice weekly. Female consumers shall be issued products for hygiene purposes.

(7) Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 90 degrees F. or at temperatures below 10

degrees F. Field staff shall carry thermometers, which accurately display current temperature. If a consumer cannot or will not hike, the group shall not continue unless eminent danger exists.

(8) The expedition plan including map routes, and anticipated schedules and times shall be carried by the field staff and recorded in the field office.

(9) Field staff shall maintain a signed, daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity.

(a) The log shall contain the following information; accidents, injuries, medications, medical concerns, behavioral problems, and all unusual occurrences.

(b) All log entries shall be recorded in permanent ink.

(c) These logs shall be available to state staff.

(10) Incoming and outgoing mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(11) Incoming and outgoing U.S. postal mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(12) Incoming mail from parents or guardians shall not be read or censored without written permission from a parent or guardian.

(13) All other mail may be restricted only by parental request in writing.

(14) All incoming mail may be required to be opened in the presence of staff. Contraband shall be confiscated.

(15) All local, state, and federal regulations and professional licensing requirements shall be met.

(16) Each program staff shall be required to carry with them a reliable time piece, which may include a wrist watch or pocket watch for the purpose of accurately reflecting the time of day, and for documentation purposes, such as recording the time of day in log notes and incident reports.

(17) The program shall have policy and procedure for suicide ideation that includes a review of any placement of a suicide watch on a consumer, by the program's clinical professional.

R501-8-6. Staff, Interns, and Volunteers.

(1) All staff, interns, and volunteers shall meet the provisions of R501-14.

(2) Each program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program. and shall coordinate office and support services, training, etc,. The executive director shall have, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have a minimum of two years of outdoor youth program administrative experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related experience or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules, and

(f) have completed an initial staff training, see R501-8-8.

(3) Each program shall have a program or field director who coordinates field operations, manages the field staff, and operates the field office. The program or field director shall meet, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have minimum of two years of outdoor youth program field experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related field, or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules,

(f) have primary responsibility for field activities and visit in the field a minimum of two days a week with no more than five days between visits,

(g) prepare reports of each visit, document conditions of consumers, document interactions of consumers and staff, and ensure compliance with rules,

(h) be annually trained and certified in CPR and currently certified in standard first aid, and

(i) have completed an initial staff training, see R501-8-8.

(4) Each program shall have field support staff responsible for delivery of supplies to the field, mail delivery, communications, and first aid support. The field support staff shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have a high school diploma or equivalency,

(c) be annually trained and certified in CPR and currently certified in standard first aid, and

(d) have completed an initial staff training and field course, see R501-8-8.

(5) Each program group shall have senior field staff working directly with the consumer who shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a related field,

(c) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file,

(d) be annually trained and certified in CPR and currently certified in standard first aid,

(e) have completed an initial staff training, see R501-8-8, and

(6) Each program shall have a field staff working directly with the consumers who shall meet, at a minimum, the following qualifications:

(a) be a minimum of 20 years of age,

(b) have a high school diploma or equivalency,

(c) have forty-eight field days of outdoor youth program experience or comparable experience which shall be documented in the individual's personnel file,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training.

(7) Each program shall have assistant field staff to meet the required consumer to staff ratio. Assistant field staff shall meet, at a minimum, the following qualifications:

(a) be a minimum of 19 years of age,

(b) have a high school diploma or equivalency,

(c) have twenty-four field days of outdoor youth programs experience,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training

(8) Each program shall have a multi-disciplinary team, accessible to consumers which shall include, at a minimum, the following:

(a) a licensed physician or consulting licensed physician,

(b) a treatment professional who may be one of the following:

(i) a licensed psychologist,

(ii) a licensed clinical social worker,
(iii) a licensed professional counselor,
(iv) a licensed marriage and family counselor, or
(v) a licensed school counselor
(c) All clinical and therapeutic personnel shall be licensed or working under a DOPL training program certified by the State of Utah.
(9) Each program may have academic and clinical interns who are learning the program practices while completing educational requirements.
(a) Interns shall be a minimum of 19 years of age.
(b) Initial training program shall be completed by all incoming staff including interns regardless of background experience.
(c) Clinical interns pursuing licensure shall be under the supervision of a licensed therapist.
(d) Academic interns shall be supervised by program staff.
(e) Interns shall not supervise consumers at any time.
(10) Each program may have program volunteers.
(a) Volunteers shall be under direct, constant supervision of program staff.
(b) Volunteers shall not be left in the role of supervising consumers at any time.
(c) Volunteers shall be at least 18 years of age and meet program guidelines.

R501-8-7. Staff to Consumer Ratio.
(1) Each youth group shall be supervised by at least two staff members at all times, one of which must be a senior field staff.
(2) In a mixed gender group, there shall be at least one female staff and one male staff.
(3) Expedition group size, including staff members, cannot exceed sixteen people with a minimum of a one to four staff to consumer ratio.
(4) Volunteers shall be counted as a consumer in figuring staff to consumer ratios.
(5) Expedition group size shall not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.

R501-8-8. Staff Training.
(1) The program shall provide a minimum of eighty hours initial staff training.
(2) Initial staff training shall not be considered completed until the staff have demonstrated to the field director proficiency in each of the following:
(a) counseling, teaching and supervisory skills,
(b) water, food, and shelter procurement, preparation and conservation,
(c) low impact wilderness expedition and environmental conservation skills and procedures,
(d) consumer management, including containment, control, safety, conflict resolution, and behavior management,
(e) instruction in safety procedures and safe equipment use; fuel, fire, life protection, and related tools,
(f) instruction in emergency procedures; medical, evacuation, weather, signaling, fire, runaway and lost consumers,
(g) sanitation procedures; water, waste, food, etc.,
(h) wilderness medicine, including health issues related to acclimation, exposure to the environment, and environmental elements,
(i) CPR, standard first aid, first aid kit contents and use, and wilderness medicine,
(j) navigation skills, including map and compass use and contour and celestial navigation,
(k) local environmental precautions, including terrain, weather, insects, poisonous plants, response to adverse situations and emergency evacuation,
(l) leadership and judgment,
(m) report writing, including development and maintenance of logs and journals, and
(n) Federal, state, and local regulations, including Department of Human Services, Bureau of Land Management, United States Forest Service, National Parks Service, Utah State Department of Fish and Game.
(3) The completion of the minimum eighty hours initial staff training shall be documented and maintained in each personnel file.
(4) The field director shall document in each personnel file that the staff have demonstrated proficiency in each of the required topic areas as listed in (2). above.
(5) The initial staff training and demonstration of proficiency must be completed and documented before the staff person may count in the staff consumer ratio.
(6) The program shall also provide on-going training to staff in order to improve proficiency in knowledge and skills, and to maintain certifications. This training shall also be documented.

R501-8-9. Staff Health Requirements.
(1) Prior to engaging in any field activity, all staff shall adhere to the following:
(a) All field staff, interns, and volunteers shall have an annual physical examination and health history signed by a licensed medical professional. A recognized physical stress assessment shall be completed as part of the physical examination.
(b) Physical examinations shall be reviewed and maintained by the provider in the staff personnel file.
(c) All program staff, interns, and volunteers shall agree to submit to drug and alcohol screening as provided for by federal and state law.

R501-8-10. Consumer Admission Requirements.
(1) Consumers shall be at least 13 through 17 years of age and have a current health history which includes notation of limitations and prescriptive medications, completed and submitted within 30 days prior to entrance into the field program and verified by a parent or legal guardian.
(2) Admissions screening shall be supervised by a treatment professional before consumer entrance into the field program and shall include the following:
(a) a review of consumer social and psychological history with the parent or legal guardian prior to enrollment,
(b) an interview with the consumer prior to entrance into the field program, and
(c) a review of consumer's health history and physical examination by a licensed medical professional prior to entrance into the field program.
(3) Consumer shall have a physical examination within 15 days prior to entrance to field program. Documentation of the examination, on a form provided by the program and signed by a licensed medical professional, shall be submitted to the program within 15 days prior to entrance to field program.
(4) A physical examination form shall be provided to the licensed medical professional by the program and the form shall clearly state a description of the physical demands and environment of the program, and require the following information:
(a) urinalysis drug screen,
(b) CBC, blood count,
(c) urinalysis for possible infections,
(d) CMP, complete metabolic profile,
(e) pregnancy test for all female consumers,
(f) physical stress assessment,
(g) determination by the physician if detoxification is

indicated for consumer prior to entrance into field program,

(h) and any other tests as deemed to be indicated.

(5) Copies of consumer's medical forms shall be maintained at the field office and another copy carried by staff members in a waterproof container throughout the course.

(6) Prior to placement in the program, psychological evaluations for consumers as indicated, who have a history of chronic psychological disorders.

(7) Upon admission and for a period of no fewer than three days staff shall closely monitor the consumers for any health problems that may be a result of becoming acclimated to the environment.

R501-8-11. Water and Nutritional Requirements.

(1) Six quarts of potable water shall be available per person, per day, minimum, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, access to water shall be available at all times during hiking.

(2) In temperatures above 90 degrees F., staff shall make sure consumer intake is a minimum of three quarts of water per day, electrolyte replacement shall be available with the expeditionary group at all times.

(3) In temperatures above 80 degrees F., water shall be available for coating consumer's body, and other cooling down techniques shall be available for the purpose of cooling as needed.

(4) Water shall be available at each campsite. Water cache location information shall be verified with field staff before the group leaves camp each day.

(5) Expedition group shall not depend on aerial drops for water supply. Aerial water drops shall be used for emergency situations only.

(6) All water from natural sources shall be treated for sanitation to eliminate health hazards.

(7) Each program shall have a written menu describing food supplied to the consumer which shall provide a minimum of 3000 calories per day. There must be fresh fruit and vegetables at least twice a week. Food shall never be withheld from a consumer for any reason. Food may not be withheld as a punishment. If no fire is available, other food of equal caloric value, which does not require cooking shall be available.

(a) The menu shall adjust to provide 30-100 percent increase in minimum dietary needs as energy expenditure such as exercise increases, or climate conditions such as cold weather dictate.

(b) Food shall be from a balance of the food groups.

(c) Forage items shall not be used toward the determination of caloric intake.

(d) There shall be no program fasting for more than 24 hours per expeditionary cycle.

(e) Multiple vitamin supplements shall be offered daily.

R501-8-12. Health Care.

(1) First aid treatment shall be provided in a prompt manner.

(2) When a consumer has an illness or physical complaint which cannot be treated by standard first aid, the program shall immediately arrange for the consumer to be seen and treated as indicated by a licensed medical professional.

(3) Each consumer shall be assessed at least every 14 days for his physical condition by a qualified professional such as a Utah EMT. Blood pressure, heart rate, allergies, and general physical condition will be checked and documented. Any assessment concerns will be documented, and the consumer will be taken to the appropriate medical professional for treatment. Medical treatment shall be provided by medical personnel and medication provided as needed. There shall be no consequences to a consumer for requesting to see a health care professional or for anything said to a health care professional.

(4) All prescriptive and over the counter medications shall be kept in the secure possession of designated staff and provided to consumers to be used as prescribed.

(5) Prescriptive medication shall be administered as prescribed by a qualified medical practitioner who is licensed. Staff shall be responsible for the following:

(a) supervise the use of all medication,

(b) record medication, including time and dosage, and

(c) record effects of medication, if any.

(d) document any incidents of missed prescriptive medication, and

(e) document any lost or missing prescriptive medication.

(6) A foot check will be conducted at least twice daily and documented.

R501-8-13. Safety.

(1) First aid kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.

(2) Program shall have a support system that meets the following criteria:

(a) Reliable daily two-way radio communications with additional charged battery packs, and a reliable backup system of contact in the event the radio system fails.

(b) The support vehicles and field office shall be equipped with first aid equipment.

(c) The support personnel shall have access to all contacts, i.e., telephone numbers, locations, contact personnel, and procedures for an emergency evacuation or field incident.

(d) A.M. and P.M. contacts between field staff and support staff are to be relayed to the field office. Contact shall be available from field staff to field office on a continuous basis.

R501-8-14. Field Office.

(1) Each program shall maintain a field office.

(2) Communication system to the field office shall be monitored 24-hours a day when consumers are in the field.

(3) Support staff shall respond immediately to any emergency situation.

(4) Support staff on duty shall be within 1 hour of the field.

(5) When staff are not present in the field office a contact telephone number shall be posted on the field office door, and the field director shall designate responsible on-call staff who shall continually monitor communications and will always be within 15 minutes travel time of the field office.

(6) field office staff shall adhere to the following:

(a) maintain current staff and consumer files which include demographics, eligibility criteria, and medical forms as a minimum,

(b) maintain a current list of names of staff and consumers in each field group,

(c) maintain a master map of all activity areas,

(d) maintain copies of each expeditionary route with its schedule and itinerary, of which copies shall be sent to the Office of Licensing and local law enforcement, as requested by these agencies,

(e) maintain a log of communications,

(f) be responsible for training and orientation, management of field personnel, related files, and records,

(g) be responsible for maintaining communications, equipment inspection, and overseeing medical incidents, and

(h) provide all information as requested for review by state staff.

R501-8-15. Environmental Requirements.

(1) All programs shall adhere to land use agencies requirements relative to sanitation and low impact camping.

(2) Consumers shall be instructed daily in the observance of low-impact camping requirements.

(3) Personal hygiene supplies shall be of biodegradable materials.

R501-8-16. Emergencies.

(1) Each program shall have a written plan of action for disaster and casualties to include the following:

(a) designation of authority and staff assignments,

(b) plan for evacuation,

(c) transportation and relocation of consumers when necessary, and

(d) supervision of consumers after evacuation or relocation.

(2) The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

(3) The program shall have a written agreement for medical emergency evacuation as needed.

(4) Emergency evacuation equipment shall be on stand-by.

(5) The program shall make prior arrangements with local rescue services in preparation for possible emergency evacuation needs, which shall be reviewed every six months.

R501-8-17. Infectious Disease Control.

(1) The program shall have policies and procedures designed to prevent or eliminate the spread of infectious and communicable diseases in the program.

R501-8-18. Transportation Services.

(1) The program shall have policies and procedures which ensures the safe and humane transport of consumers between their homes and the program.

(2) "Escort transportation services" means: The charging of a fee for having a responsible adult accompany the consumer during transportation from the consumers home to the program or back to their home.

(3) Escort transportation services whether provided by the program or by an independent transportation service shall not be a requisite to enrollment in the program, but shall be the choice of the consumer's parent or guardian.

(4) Programs that provide escort transportation services shall provide parents or guardians with the contact information of at least two other escort transportation services to allow them to have an informed decision.

R501-8-19. Transportation.

(1) There shall be written policy and procedures for transporting consumers.

(2) There shall be a means of transportation in case of emergency.

(3) Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

(4) Each vehicle shall be equipped with an adequately supplied first aid kit.

(5) When transporting any consumer for any reason, there shall be two staff present at all times, one of which shall be of the same sex as the consumer, except in emergencies.

(6) Staff shall adhere to local, state, and federal laws concerning the operation of motor vehicles.

(7) Staff and consumers shall wear seat belts at all times while the vehicle is moving.

R501-8-20. Evaluation.

(1) Following the wilderness experience, each consumer shall receive a debriefing to include a written summary of the consumer's participation and the progress they achieved.

(2) Parents, consumers, and other involved individuals shall be provided the opportunity and encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program for a period of two years.

R501-8-21. Solo Experiences.

(1) If an Outdoor Youth Program conducts a solo component for consumers as part of the program they shall have and follow written policies and procedures, which shall include the following:

(a) A written description of the solo component to ensure that the consumers are not exposed to unreasonable risks.

(b) Staff shall be familiar with the site chosen to conduct solos.

(c) Plans for supervision shall be in place during the solo.

(d) Solo emergency plans.

R501-8-22. Stationary Camp Sites.

(1) An outdoor youth program that maintains a designated location for the housing of consumers is considered stationary and shall be subject to additional fire, health and safety standards.

(a) A stationary Outdoor Youth Program camp shall be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the Outdoor Youth Program camp.

The inspection shall require:

(i) Fire Extinguishers. One (1) 2-A-10BC type fire extinguisher shall at minimum be in each of the following locations as required by the fire inspector:

(A) On each floor in any building that houses consumers;

(B) In any room where cooking or heating takes place;

(C) In a group of tents within a seventy-five (75) foot travel distance; and

(D) Each fire extinguisher shall be inspected annually by a fire extinguisher service agency.

(ii) Smoke Detectors. A smoke detector shall be in buildings where consumers sleep.

(iii) Escape Routes. A minimum of two (2) escape routes from buildings where consumers sleep.

(iv) Flammable Liquids. Flammable liquids shall not be used to start fires, be stored in structures that house consumers, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch.

(v) Electrical. Wiring shall be properly attached and fused to prevent overloads.

(b) A stationary Outdoor Youth Program camp shall be inspected by the Local Health Department before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the site of the camp. The inspection shall require the following:

(i) Food. Food be stored, prepared and served in a manner that is protected from contamination.

(ii) Water Supply. The water supply shall be from a source that is accepted by the local health authority according to UAC R392-300 "Rules for Recreation Camp Sanitation," at the time of application and for annual renewal of such licenses.

(iii) Sewage Disposal. Sewage shall be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to UAC R392-300 "Rules for Recreation Camp Sanitation".

R501-8-23. Non-Compliance With Rules.

(1) Due to the difficulty of monitoring outdoor programs and the inherent dangers of the wilderness, a single violation of the foregoing life and safety rules may result in immediate revocation of the license and removal of consumers from programs pursuant to General Provisions as found in R501-1.

KEY: licensing, human services, youth
January 17, 2003 62A-2-101 et seq.
Notice of Continuation November 5, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-11. Social Detoxification Programs.
R501-11-1. Authority.

Pursuant to 62A-2-101 et seq., the Office of Licensing, shall license social detoxification programs according to the following rules.

R501-11-2. Purpose.

A social detoxification program offers room, board and specialized rehabilitation services to persons who are in an intoxicated state, or withdrawing from alcohol or drugs. In social detoxification, individuals are assisted in acquiring the sobriety and a drug free condition necessary for living in the community and the program places an emphasis on helping the individual obtain further care after detoxification.

R501-11-3. Definition.

Social detoxification Program means a short-term non-medical treatment service for individuals unrelated to the owner or provider in accordance with 62A-2-101(18).

R501-11-4. Administration.

A. In addition to the following rules, all social detoxification programs shall comply with R501-2, Core Rules.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-11-5. Staffing.

A. Each program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

B. Professional staff shall include at least one of the following individuals who have received training to work with substance abusers:

1. a licensed physician, or a consulting licensed physician, or

2. a licensed mental health therapist, or a consulting licensed mental health therapist, or

3. a licensed psychologist or consulting licensed psychologist, and

4. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

C. The program shall have a staff person trained, by a certified instructor in standard first aid and CPR, on duty with the consumers at all times. Training shall be updated as required by the certifying agency.

R501-11-6. Direct Service.

Program service records shall contain the following:

A. name, address, telephone number and admission date,

B. emergency information with names, addresses and telephone number, of a preferred individual and next of kin. Services will not be refused if a person is too intoxicated to provide accurate and detailed emergency information. The program shall obtain thorough information as soon as the client is able to report, and

C. a statement indicating that the consumer meets the admission criteria.

R501-11-7. Physical Environment.

A. The program shall maintain appropriate documentation of compliance with the following items as applicable:

1. local zoning ordinances, for "I" occupancies only,
2. local business license,
3. local building codes,
4. local fire safety regulations, and
5. local health codes.

B. The program shall provide written approval from the appropriate local government agency for new program services or increased consumer capacity.

C. Building and Grounds

1. The program shall insure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-11-8. Physical Facility.

A. Staff Quarters: A 24 hour live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Sleeping Space.

1. Large rooms may be used as dormitory style bedrooms.

2. A minimum of 50 square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted.

3. A minimum of 70 square feet per individual shall be provided in a single occupant bedroom. Storage space shall not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. There shall be an escape window for each sleeping room unless there are two ways to exit the room.

6. Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each consumer stay and at least weekly.

7. Sleeping quarters serving male and female residents shall be structurally separated.

D. Bathrooms

1. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each eight residents. These shall be maintained in good operating order and in a clean and safe condition.

2. Toilets and baths or showers shall allow for individual privacy. They shall also accommodate consumers with physical disabilities, as required by the state building code.

3. Bathroom mirrors shall be secured to the walls at convenient heights.

4. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene.

5. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

R501-11-9. Equipment.

A. Furniture and equipment shall be of sufficient quantity, variety and quality to meet program and consumer needs.

B. All furniture and equipment shall be maintained in a clean and safe condition.

R501-11-10. Laundry Service.

A. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

B. Laundry appliances shall be maintained in good operating order and in a clean and safe condition.

R501-11-11. Food Service.

A. One person shall be responsible for food service. If this person is not a professionally qualified dietician, annual consultation with a qualified dietitian shall be obtained.

B. The person responsible for food service shall maintain

a current list of consumers with special nutritional needs, record in the consumer's service record information relating to special nutritional needs, and provide nutrition counseling where indicated.

C. Kitchens shall have clean and safe operational equipment for the preparation, storage, serving and clean up of all meals.

R501-11-12. Medication.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for hazardous chemicals and materials according to the direction of the local fire authorities. Any flammable or hazardous chemicals or materials shall be stored in appropriate well-ventilated storage area.

C. The program shall have designated qualified staff, who shall be responsible to:

1. administer or supervise medication,
2. supervise self-medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-11-13. Specialized Services.

A. The program shall not admit those who are currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

B. The program shall complete a preliminary screening at the time an individual presents for service to determine appropriateness for social model detox. The intake evaluation is completed within seven days.

C. Consumers shall demonstrate recent evidence of a Tuberculosis screening or be tested for Tuberculosis within one weeks. Clients who exhibit signs of possible active tuberculosis will be screened immediately with assistance from the local health department. Health department recommendations will be followed. Program staff will be tested every six months.

D. Once the client has completed the acute detox period as demonstrated by reasonable physical and psychological stability, case managers will conduct an evaluation to determine the treatment referral.

KEY: licensing, human services, substance abuse
January 30, 2003 62A-2-101 et seq.
Notice of Continuation November 21, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Child Foster Care.
R501-12-1. Authority.

(1) Pursuant to 62A-2-101 et seq., the Office of Licensing, shall license child foster care services according to the following rules. Child foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Juvenile Justice Services, hereinafter referred to as DJJS.

R501-12-2. Purpose Statement.

(1) The purpose of these rules is to establish the minimum requirements for licensure of child foster homes and proctor homes for children in the custody of the Department of Human Services, herein after referred to as DHS. Rules applying to child foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Definitions.

(1) "Child foster care" means the provision of care which is conductive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

(2) "Proctor care" means the provision of child foster care for only one youth at a time placed in a licensed or certified proctor home. The youth shall be adjudicated to the custody of DJJS.

(3) "Foster care agency" is any authorized licensed private agency certifying providers for foster or proctor care services, hereinafter referred to as Agency.

(4) "Child" means anyone under 18 years of age with the exception of DJJS where custody and guardianship may be maintained to 21 years of age.

R501-12-4. Licensing and Renewal.

(1) Application: An individual or legally married couple age 21 and over may apply to be foster or proctor parents. The applicant shall be provided with an application and a copy of the foster care licensing rules. The application shall require the applicant to list each member of the applicant's household.

(2) Medical Information:

(a) At the time of application, each potential foster and proctor parent shall obtain and submit to the Agency or the Office of Licensing, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster or proctor parent. On an annual basis thereafter, each foster and proctor parent shall submit a personal health status statement.

(b) A psychological examination of a potential or current foster and proctor parent may be required by the Office of Licensing or the Agency if there are questions regarding the individual's mental status which may impair functioning as a foster or proctor parent. The psychological examination shall be arranged and paid for by the foster or proctor parent.

(3) References:

The applicant shall submit the names of no more than four individuals, two not related and one related, who may be contacted by the Agency or the Office of Licensing for a reference. These individuals, shall be knowledgeable of the ability of the potential foster or proctor parents to nurture children. Three acceptable letters of reference must be received by the Agency or the Office of Licensing before a license will be issued.

(4) Background Screening:

(a) Pursuant to 62A-2-120 and R501-14, criminal background screening, referred to as CBS, requires that all child foster or proctor care applicants or persons 18 years of age or older living in the home must have the criminal background screening successfully completed. This shall be completed on initial home approval and yearly thereafter.

(b) Pursuant to 62A-2-121 and R501-18, child abuse and neglect licensing data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of a severe type of abuse and neglect has been substantiated by the Juvenile Court. This shall be done on initial home approval and yearly thereafter.

(5) Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster or proctor home. The home study shall be updated annually with a home visit.

(6) Provider Code of Conduct: Each foster and proctor care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

(7) Training: Each foster and proctor care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

(8) Approval or Denial:

(a) Following pre-service training and submission of all required documentation, the home study and an assessment of an applicant shall be completed.

(b) A license shall be issued for applicants who meet Foster Care Licensing Rules.

(c) The decision to approve or deny the applicant shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(d) No person may be denied a foster or proctor care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

(e) The provider shall be evaluated annually for compliance with foster care rules when renewing a license.

(f) Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

(g) Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

(h) Providers shall not be licensed or certified to provide foster or proctor care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101.

(i) The Office Director or designee may grant a time limited variance to a rule if it is in the best interest of the specific child and addresses how basic health and safety requirements shall be maintained in accordance with R501-1-8.

(j) All providers shall report any major changes in their lives to the Office of Licensing or Agency within 48 hours. These changes shall be re-evaluated within one month of the change by the Office of Licensing or Agency. A major change in the lives of the foster or proctor parents shall include, but is not limited to the following;

(i) death or serious illness among the members of the foster or proctor family,

(ii) separation or divorce,

(iii) loss of employment,

(iv) change of residence, or

(v) suspected abuse or neglect of any child in the foster or proctor home.

R501-12-5. Training.

(1) Applicants shall attend training required and approved by the applicable DHS Division or other approved entity and

submit verification of completed training to the Office of Licensing or Agency annually.

(2) At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

(3) Providers associated with an Agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster and Proctor Parent Requirements.

(1) Personal characteristics of foster and proctor parents shall include the following:

(a) Foster and proctor parents shall be in good health, able to provide for the physical and emotional needs of the child.

(b) Foster and proctor parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster or proctor parents.

(c) Foster and proctor parents shall document and verify legal residential status when appropriate.

(d) Foster or proctor parents shall have the ability to help the child grow and change in behavior.

(e) Foster or proctor parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster or proctor care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to the Office of Licensing or Agency on an annual basis.

(f) Division employees shall not be approved as foster or proctor parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

(g) Owners, directors, and members of the governing body for foster and proctor care agencies shall not serve as foster or proctor parents.

(h) Foster and proctor parents shall follow Agency rules and work cooperatively with the Agency, Courts, and law enforcement officials.

(2) Family Composition shall meet the following:

(a) The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

(b) No more than two children under the age of two, shall reside in a foster home, including natural children.

(c) No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

(d) No more than four foster children shall be in any one home.

(e) No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DJJS.

R501-12-7. Physical Aspects of Home.

(1) The foster and proctor home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

(2) The physical facilities of the foster and proctor home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

(3) The foster and proctor home shall be free from health and fire hazards. Each foster and proctor home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

(4) There shall be sufficient bedroom space to provide for the following:

(a) rooms are not shared by children of the opposite sex, except infants under the age of two years,

(b) children do not sleep in the parents' room, except infants under the age of two years,

(c) each child has his or her own solidly constructed bed adequate to the child's size,

(d) a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

(e) no more than four children are housed in a single bedroom.

(5) Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

(6) Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

(7) There shall be adequate indoor and outdoor space for recreational activities.

(8) Foster and proctor homes shall offer sufficiently balanced meals to meet the child's needs.

(9) All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

(10) Areas determined to be unsafe, including but not limited to, steep grades, cliffs, open pits, swimming pools, hot tubs, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

(11) Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

(12) Exits: There shall be at least two means of exit on each level of the foster and proctor home.

R501-12-8. Safety.

(1) Foster and Proctor families shall conduct fire drills at least quarterly and provide documentation to the Office of Licensing and Agency.

(2) Foster and proctor parents shall provide and document training to children regarding response to fire warnings and other instructions for life safety.

(3) The foster or proctor home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

(4) The foster or proctor home shall have an adequately supplied first aid kit such as recommended by the American Red Cross.

(5) Foster and Proctor parents who have firearms, ammunition, or other weapons shall assure that they are inaccessible to children at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitutional or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

(6) Foster and Proctor parents shall not provide a weapon to a minor or permit a minor to possess a weapon in violation of Sections 76-10-509 through 76-10-509.7.

(a) The Office shall identify whether a foster or proctor parent possesses or uses a firearm or other weapon and shall provide this information to the Division of Juvenile Justice Services and the Division of Children and Family Services for use in accordance with R512-302-4 and Section 63-46b-2.1.

(7) Foster and Proctor parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

(8) There shall be locked storage for hazardous chemicals

and materials.

R501-12-9. Emergency Plans.

(1) Foster and Proctor parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation,

(b) transportation and relocation of children when necessary,

(c) supervision of children after evacuation or relocation, and

(d) notification of appropriate authorities.

(2) Foster and Proctor parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster or Proctor parents shall immediately report any serious illness, injury or death of a foster or proctor child to the appropriate Division or Agency and the Office of Licensing.

R501-12-10. Infectious Disease.

(1) Foster and Proctor parents shall contact their local health department for assistance in preventing or controlling infectious and communicable diseases in the home. In the event of an infectious or communicable disease outbreak, foster and proctor parents shall follow specific instructions given by the local health department.

R501-12-11. Medication.

(1) Foster and Proctor parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.

(2) Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

(3) Non-prescriptive medications may be administered by foster or proctor parents according to manufacturer's instructions.

(4) Medications shall not be administered by the foster or proctor child.

(5) Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or Agency worker.

(6) There shall be locked storage for medication.

R501-12-12. Transportation.

(1) Foster and Proctor parents shall provide transportation. In case of an emergency a means of transportation shall be arranged by the foster or proctor parents.

(2) Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

(3) Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

(4) An emergency telephone number shall be in the vehicle used to transport children.

(5) Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by the American Red Cross.

R501-12-13. Behavior Management.

(1) Foster and Proctor parents shall provide supervision at all times.

(2) Foster and Proctor parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.

(3) The foster or proctor parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

(4) Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

(5) Foster and Proctor parents shall inform the Division or Agency worker of any extreme or repeated behavioral problems of a child placed in the foster or proctor home.

R501-12-14. Child's Rights in Foster and Proctor Care.

(1) The foster and proctor parent shall adhere to the following:

(a) allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special prescribed diet,

(b) allow the child to participate in family activities,

(c) protect privacy of information,

(d) not make copies of the child's records,

(e) explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

(f) not allow discrimination,

(g) treat the child with dignity,

(h) allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise,

(i) follow visitation rights as provided by DHS or Agency worker,

(j) allow the child to send and receive mail providing that security and general health and safety requirements are met, foster or proctor parents may only censor or monitor a foster or proctor child's mail or phone calls by court order,

(k) provide for personal needs and clothing allowance, and

(l) respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

(1) Foster and Proctor parents shall maintain the following:

(a) current license certificate,

(b) copy of each contract with DHS,

(c) record of money provided to each foster or proctor child,

(d) record of expenditures for each foster or proctor child, and

(e) documentation of special need payments on behalf of the foster or proctor child.

(2) The Office of Licensing and Agency staff shall maintain a separate record for each child foster or proctor care home or Agency.

KEY: licensing, human services, foster care
September 9, 2004 62A-2-101 et seq.
Notice of Continuation November 15, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-13. Adult Day Care.
R501-13-1. Authority.

Pursuant to 62A-2-101 et seq., the Office of Licensing, hereinafter referred to as Office, shall license adult day care programs according to the following rules.

R501-13-2. Purpose.

Adult day care is designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting.

R501-13-3. Definition.

Pursuant to 62A-2-101(1) adult day care means continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a 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.

R501-13-4. Governance.

A. The program shall have a governing body which has responsibility for and authority over the policies, procedures and activities of the program.

B. The governing body shall be one of the following:

1. a Board of Directors in a nonprofit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their interrelationship. The chart shall define lines of authority and responsibility for all program staff.

E. When the governing body is composed of more than one person, the governing body shall establish bylaws, and shall hold formal meetings at least twice a year to evaluate quality assurance. A written record of meetings including date, attendance, agenda and actions shall be maintained on-site.

F. The responsibilities of the governing body shall be as follows:

1. to ensure program policy and procedure compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office within thirty days of changes in program administration or purpose, and

4. to ensure that the program is fiscally sound.

R501-13-5. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document ownership or incorporation.

R501-13-6. Program Administration.

A. A qualified Director shall be designated by the governing body to be responsible for day to day program operation.

B. Records as specified shall be maintained on-site.

C. Program personnel shall not handle consumer finances.

D. There shall be a written statement of purpose to include the following:

1. mission statement,

2. description of services provided,

3. description of services not provided,

4. description of population to be served,

5. fees to be charged, and

6. participation of consumers in activities related to fund raising, publicity, research projects, and work activities that benefit anyone other than the consumer.

E. The statement of purpose shall be provided to the consumer and the responsible person and shall be available to the Office, upon request. Notice of such availability shall be posted.

F. There shall be a quality assurance plan to include a description of methods and standards used to assure high quality services. Implementation of the plan shall be documented and available for review by the Office, the consumer, and the responsible person.

G. There shall be written reports of all grievances and their conclusion or disposition. Grievance reports shall be maintained on-site.

H. The program shall have clearly stated guidelines and administrative procedures to ensure the following:

1. program management,

2. maintenance of complete and accurate accounts, books, and records, and

3. maintenance of records in an accessible, standardized order and retained as required by law.

I. All program staff, consultants, volunteers, interns and other personnel shall read, understand, and sign the current Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct.

J. The program shall post their license in a conspicuous place on the premises.

K. Each program shall comply with State and Federal laws regarding abuse, shall post a copy of State Law 62A-3-301, and provide an informational flyer to each consumer and the responsible person.

L. The program shall meet American Disabilities Act,(ADA) guidelines and make reasonable accommodation for consumers and staff. ADA guidelines and reasonable accommodation shall be determined by the authority having jurisdiction.

M. The program shall comply with local building code enforcement for disability accessibility.

R501-13-7. Record Keeping.

A. The Director shall maintain the following information on-site at all times:

1. organizational chart,

2. bylaws of the governing body if applicable,

3. minutes of formal meetings,

4. daily consumer attendance records,

5. all program related leases, contracts and purchase-of-service agreements to which the governing body is a party,

6. annual budgets and audit reports,

7. annual fire inspection report and any other inspection reports as required by law, and

8. copies of all policies and procedures.

B. The Director shall have written records onsite for each consumer, to include the following:

1. demographic information,

2. Medicaid and Medicare number, when appropriate,

3. biographical information,

4. pertinent background information,

a. personal history, including social, emotional, and physical development,

b. legal status, including consent forms for dependent consumers, and

c. an emergency contact with name, address and telephone number,

5. consumer health records including the following,

a. record of medication including dosage and administration,

b. a current health assessment signed by a physician, and

c. signed consent form,

6. intake assessment,

7. signed consumer agreement, and

8. copy of consumers' service plan.

C. The Director shall have an employment file on-site for each staff person.

D. The Office shall have the authority to review program records at anytime.

R501-13-8. Direct Service Management.

A. The program shall have a written eligibility, admission and discharge policy and procedure to include the following:

1. intake process,

2. self-admission,

3. notification of the responsible person,

4. reasons for admission refusal which includes a written, signed statement, and

5. reasons for discharge or dismissal.

B. Intake Assessment

1. Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, legal status, social, psychological and, as appropriate, developmental, vocational or educational factors.

2. In emergency drop-in care situations which necessitate immediate placement, the assessment shall be completed on the same day of service in all situations.

3. All methods used during intake shall consider age, cultural background, dominant language, and mode of communication.

4. During intake, the consumer's legal status, according to State Law, shall be determined as it relates to the responsible person who may have legal authority to make decisions on the consumer's behalf.

C. Consumer Agreement

A written agreement, developed with the consumer, the responsible person and the Director or designee, shall be completed, signed by all parties, and kept in the consumer's record. It shall include the following:

1. rules of program,

2. consumer and family expectations as appropriate and agreed upon,

3. services to be provided and not provided and cost of service, including refunds,

4. authorization to serve and to obtain emergency medical care, and

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, as appropriate.

D. Individual Consumer Service Plan

1. A program staff member in collaboration with the Director, shall be assigned to each consumer and have responsibility and authority for development, implementation, and review of the individual consumer service plan.

2. The plan shall include the following:

a. findings of the intake assessment and consumer records,

b. individualized program plan to enhance consumer well-being,

c. specification of daily activities and services,

d. methods for evaluation, and

e. discharge summary.

3. Individual consumer service plans shall be developed within three working days of admission and evaluated within 30 days of admission and every 90 days thereafter or as changes occur.

4. All persons working directly with the consumer shall review the individual consumer service plan.

E. Incident or Crisis Intervention Reports

1. There shall be written reports to document consumer death, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of a consumer while in care.

2. The report shall include the following:

a. summary information,

b. date and time of emergency intervention,

c. list of referrals if any,

d. follow-up information, and

e. signature of person preparing report and other witnesses confirming the contents of the report.

3. The report shall be completed within 48 hours of each occurrence and maintained in the individual consumer's record.

4. When an incident or crisis involves abuse, neglect or death of a consumer, the Director or designee shall document the following:

a. a preliminary written report within 24 hours of the incident, and

b. immediate notification to the Office, the consumer's legally responsible person, the nearest Human Services office, and as appropriate a law enforcement authority.

R501-13-9. Direct Service.

A. Adult day care activity plans shall be prepared to meet individual consumer and group needs and preferences. Daily activity plans may include, community living skills, work activity, recreation, nutrition, personal hygiene, social appropriateness, and recreational activities that facilitate physical, social, psychological, and emotional development.

B. Activity plans shall be written, staff shall be oriented to their use, and shall be maintained on file at the program.

C. There shall be a daily schedule, posted and implemented as designed.

D. Each consumer shall have the opportunity to use at least four of the following activity areas each day: general activities, sedentary activities, specialized activities, rest area, self care area, appointed outdoor area, kitchen and nutrition area, and reality orientation area.

E. A sufficient amount of equipment and materials shall be provided so that consumers can participate in a variety of activities simultaneously.

F. Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

G. All consumers shall receive the same standard of care regardless of funding source.

R501-13-10. Behavior Management.

A. There shall be a written policy and procedure for methods of behavior management to include the following:

1. definition of appropriate and inappropriate consumer behaviors, and

2. acceptable staff responses to inappropriate behaviors.

B. The policy shall be provided to all staff prior to working with consumers and staff shall receive annual training relative to behavior management.

C. No staff member shall use, nor permit the use of physical restraint, humiliating or frightening methods of punishment on consumers at anytime.

D. Passive physical restraint shall be used only in behavioral related situations as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

R501-13-11. Rights of Consumers.

A. The program shall have a written statement of consumers' rights to include the following:

1. privacy of information and privacy for both current and closed consumers' records,

2. reasons for involuntary termination and criteria for readmission to the program,

3. potential harm or acts of violence to consumers or others,

4. consumers' responsibilities including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity, and

9. the right to communicate with family, attorney, physician clergyman, and others.

B. The consumer and the responsible person shall be informed of the consumer rights statement to his or her understanding verbally and in writing.

R501-13-12. Personnel Administration.

A. There shall be written policies and procedures to include the following:

1. staff grievances,

2. lines of authority,

3. orientation and ongoing training,

4. performance appraisals, and

5. rules of conduct.

B. Individual staff and the Director shall review policy together.

C. The program shall have a Director, appointed by the governing body, who shall be responsible for day to day program and facility management.

D. The Director or designee shall be on-site at all times during program operating hours.

E. The program shall employ a sufficient number of trained, licensed, and qualified staff in order to meet the needs of the consumers, implement the service plan, and comply with licensing rules.

F. The program shall have a written job description for each position, to include a specific statement of duties and responsibilities and the minimum required level of education, training and work experience.

G. The governing body shall ensure that all staff are certified or licensed as legally required and appropriate to their assignment.

H. The program shall have access to a physician licensed to practice medicine in the State of Utah.

I. The Director shall have a file on-site for each staff person to include the following:

1. application for employment, including record of previous employment with references,

2. applicable credentials and certifications,

3. initial health evaluation including medical history,

4. Tuberculin test,

5. food handler permit as required,

6. training record, including first aid and CPR,

7. performance evaluations, and

8. signed copy of Code of Conduct.

J. Provisions of R501-14 and R501-18 shall be met.

K. Staff shall have access to his or her staff file and shall be allowed to add written statements to the file.

L. Staff files shall be retained for a minimum of two years after termination of employment.

M. A program using volunteers, student interns or other personnel, shall have a written policy to include the following:

1. direct supervision by a paid staff member,

2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,

3. character reference checks, and

4. all personnel shall complete an employment application and shall read and sign the current Provider Code of Conduct. The application shall be maintained on-site for two years.

N. Staff Training:

1. Staff members shall be trained in all program policies and procedures.

2. Staff shall have Food Handler permits as required to fulfill their job description. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.

3. DHS may require further specific training, which will be defined in applicable State contracts.

4. Training shall be documented and maintained in individual staff files.

R501-13-13. Staffing.

A. Adult Day Care Staffing Ratios

1. When eight or fewer consumers are present, one staff person shall provide direct supervision at all times with a second staff person meeting minimum staff requirements immediately available.

2. When nine to 16 consumers are present, two staff shall provide direct supervision at all times. The ratio of one staff person per eight consumers will continue progressively.

3. In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

4. Staff supervision shall be provided continually throughout staff training periods.

5. For programs with nine or more consumers, administrative and maintenance staff shall not be included in staff to consumer ratio.

B. The Director shall meet one of the following credentials:

1. a licensed nurse,

2. a licensed social worker,

3. a licensed psychologist,

4. a recreational, or physical therapist, properly licensed or certified,

5. other licensed professionals in related fields who have demonstrated competence in working with functionally impaired adults, or

6. a person that has received verifiable training to work with functionally impaired adults, and is in consultation on an ongoing basis with a licensed or certified professional with Director credentials.

C. Directors shall obtain 10 hours of related training on an annual basis.

D. Minimum Staff Requirements

1. Staff shall be 18 years of age or older and demonstrate competency in working with functionally impaired adults.

2. Staff shall receive eight hours of initial orientation training designed by the Director to meet the needs of the program, plus 10 hours of work related training on a yearly basis.

R501-13-14. Physical Facility.

A. The governing body shall provide written documentation of compliance with the following:

1. local zoning,

2. local business license,

3. local building codes,

4. local fire safety regulations, and

5. local health codes, as applicable, including but not limited to Utah Food Service and Sanitation Act.

B. In the event of ownership change, structural remodeling or a change in category of service, the Office and other regulatory agencies shall be immediately notified.

C. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for its consumers and staff.

R501-13-15. Physical Environment.

A. There shall be a minimum of fifty square feet of indoor floor space per consumer designated specifically for adult day care during program operational hours. Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

B. Outdoor recreational space on or off site and compatible recreational equipment shall be available to facilitate activity plans.

C. All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

D. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off.

E. Space shall be used exclusively for adult day care during designated hours of operation.

F. Bathrooms

1. There shall be at least one bathroom exclusively for consumers use during business hours. For facilities serving more than ten consumers there shall be separate male and female bathrooms exclusively for consumer use.

2. Adult day care programs shall provide the following:

TABLE 1

Toilets		Sinks	
Male	1:15	Female	1:15
Female	1:15	Male	1:15

3. Bathrooms shall accommodate physically disabled consumers.

4. Each bathroom shall be properly supplied with toilet paper, individual disposable hand towels or air dryers, soap dispensers, and other items required for personal hygiene. Consumers' personal items shall be labeled and stored separately for each consumer.

5. Toilet rooms shall be ventilated by mechanical means or equipped with a screened window that opens. Toilet rooms shall be maintained in good operating order and in a clean and safe condition.

6. Each toilet shall be individually stalled with closing doors for privacy.

G. Safety

1. All furniture and equipment shall be maintained in a clean and safe condition. Equipment shall be operated and maintained as specified by manufacturer instructions.

2. Grade level entrance, approved ramps, handrails and other safety features shall be provided as determined by local, state and federal regulations and fire authorities in order to facilitate safe movement.

3. Provisions of the Utah Clean Air Act shall be followed if smoking is allowed in the building.

4. Use of restrictive barriers shall be approved by fire authorities.

5. Use of throw rugs is prohibited.

6. Hot water accessible to consumers shall be maintained at a temperature that does not exceed 110 Fahrenheit.

7. A secured storage area, inaccessible to consumers, shall be used for volatile and toxic substances.

8. Heating, ventilation, and lighting shall be adequate to protect the health of the consumers. Indoor temperature shall be maintained at a minimum of 70 Fahrenheit.

H. Food Service

1. Meals provided by program:

a. Kitchens used for meal preparation shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals. All equipment shall be maintained in working order. Food preparation areas shall be maintained in a clean and safe condition.

b. One person shall be responsible for food service.

c. The person responsible for food service shall maintain a current list of consumers with special nutritional needs or allergies. Records of consumer special nutritional needs shall be kept in the consumer's service records. Food shall be prepared and served in accordance with special nutritional needs.

2. Food activities in which consumers participate shall be directly supervised by staff with a food handlers permit.

3. Catered foods and beverages provided from outside sources shall have adequate on-site storage and refrigeration as well as a method to maintain adequate temperature control.

4. Dining space shall be designated and maintained in a clean and safe condition.

5. Menus shall be approved by a registered dietitian unless the program is participating in the Federal Adult and Child Nutrition program administrated through the State Office of Education.

6. Consumers shall receive meals or snacks according to the following:

TABLE 2

Hours in Care	Meals/Snacks That Shall Be Served
8 or more hours	1 meal and 2 snacks or 2 meals and 1 snack
4 hours but less than 8 hours	1 meal and 2 snacks
4 hours or less	1 snack

7. Sufficient food shall be available for second servings.

8. There shall be no more than three hours between snack or meal service.

9. Powdered milk shall be used for cooking only.

I. Medication

1. All prescribed and over the counter medication shall be provided by the consumer, the responsible person or by special arrangement with a licensed pharmacy.

2. All medications shall be clearly labeled. Medication shall be stored in a locked storage area. Refrigeration shall be provided as needed with medication stored in a separate container.

3. There shall be written policy and procedure to include self administered medication, medication administered by persons with legal authority to do so and the storage, control, release, and disposal of medication in accordance with federal and state law.

4. Any assisted administration of medication shall be documented daily by the Director or designee.

R501-13-16. Infectious Disease and Illness.

A. The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility.

B. If a consumer shows signs of illness after arrival, staff shall contact the family or the responsible person immediately. The consumer shall be isolated.

C. No consumer shall be admitted for care or allowed to remain at the program if there are signs of vomiting, diarrhea, fever or unexplained skin rash.

D. Staff shall follow Department of Health rules in the event of suspected communicable and infectious disease.

R501-13-17. Emergency Plans and General Safety.

A. Each program shall have a written plan of action for disaster developed in coordination with local emergency planning services and agencies.

B. Consumers and staff shall receive instructions on how to respond to fire warnings and other instructions for life safety.

C. The program shall have a written plan which staff follow in medical emergencies and in arrangements for medical care, including notification of consumers' physician and the responsible person.

D. Fire drills shall be conducted at least monthly at different times during hours of operation, and documented. Notation of inadequate response shall be documented.

E. The program shall have immediate access to 24 hour telephone service. Telephone numbers for emergency assistance shall be posted by the telephone.

F. The program shall have an adequately supplied first aid kit on-site, appropriate to program size.

R501-13-18. Transportation.

A. There shall be written policy and procedures for transporting consumers.

B. A list of all occupants or consumers, and the name, address and phone number of the program shall be maintained in each vehicle.

C. There shall be a means of transportation in case of emergency.

D. Vehicle drivers shall have a drivers license valid in the State of Utah and follow safety requirements of State Motor Vehicles and Public Safety. Drivers shall have certified first aid and CPR training.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

F. A belt cutter shall be kept in all vehicles used to transport consumers. The belt cutter shall be located in an easily accessible, safe place.

G. Loose items shall be secured within the vehicle to reduce the danger of flying objects in an emergency.

KEY: human services, licensing
April 15, 2000 62A-2-101 et seq.
Notice of Continuation November 5, 2007 62A-4

R512. Human Services, Child and Family Services.
R512-43. Adoption Assistance.
R512-43-1. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means the earlier of (a) the date an Adoption Agreement is signed with the Division of Child and Family Services for placement of a child in the home, or (b) the date an adoption petition is filed.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means the Division of Child and Family Services or a public agency or tribal organization with whom the Division of Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-2. Purpose and Authority.

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (2001), and 45 CFR 1356.40 (2000) and 45 CFR 1356.41 (2000) are incorporated by reference.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption subsidy committee on a form provided by the Division of Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from the Division of Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption subsidy committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) The Division of Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify the Division of Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to $2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption subsidy

committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, adoption home study, health and psychological examinations of adoptive parents, supervision of the placement prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption subsidy committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.

(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption subsidy committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption subsidy committee for approval. If the requested amount is not approved or is reduced by the committee, the Division of Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues;

severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The adoption subsidy committee must approve the level of need identified for the child.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) Monthly subsidy payments for a child's needs categorized as Level Two range from 40 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(e) Monthly subsidy payments for a child's needs categorized as Level Three range from 70 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare. In addition, the child meets AFDC requirements in the month adoption proceedings are initiated.

(iii) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement,

(C) Title IV-E foster care maintenance payments were made on behalf of the child, and

(D) The child continues to meet AFDC requirements in the month adoption proceedings are initiated.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child meets the definition of a child with a previous IV-E agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy.

The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite, day care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to $3,000 will be considered and are subject to the approval of the regional adoption subsidy committee.

(5) Supplemental adoption assistance requests from $3,001 to $10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding $10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the regional director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the regional director.

(9) A request for an amendment or extension of an existing

supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is $3,000 to $10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds $10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Subsidy Committee.

(1) Each region shall establish at least one regional adoption subsidy committee.

(2) The regional adoption subsidy committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

(c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,

(d) Approval of supplemental adoption assistance up to $3,000,

(e) Extension of adoption assistance up to age 21 for a qualifying child,

(f) Renewal of adoption assistance, and

(g) Documentation of committee decisions.

R512-43-9. Renewal and Review of Adoption Assistance.

The adoption assistance agreement for a monthly subsidy or state medical assistance shall be renewed at least once every three years and reviewed periodically by regional staff. An agreement for supplemental adoption assistance exceeding $3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The child reaches age 18, unless approval has been given by the adoption subsidy committee to continue until age 21 due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(j) The adoptive parents fail to respond to a renewal request.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

(4) Adoption assistance shall not be terminated for an adoptive parent's failure to respond to a renewal request for the agreement unless the Division of Child and Family Services has given the adoptive parents adequate notice of the potential termination. Adequate notice means that a letter shall be sent to the adoptive parents notifying them of the need to renew the adoption assistance agreement, specifying a date by which the adoptive parents shall respond. If the adoptive parents do not respond to the original request, the Division of Child and Family Services shall send a certified letter to the family explaining the importance of renewing the adoption assistance agreement and the potential consequences of failing to renew the agreement. If the certified letter is returned unclaimed, additional efforts shall be pursued to locate the family such as a phone call or home visit before the assistance may be terminated. If the certified letter is returned undeliverable, the adoption assistance may be terminated.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Division of Child and Family Services decision to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. Interstate Adoption Assistance.

(1) The Division of Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, the Division of Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care
November 21, 2007 62A-4a-106
Notice of Continuation January 31, 2007 62A-4a-907 through 62-4a-907

R512. Human Services, Child and Family Services.
R512-51. Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs.
R512-51-1. Purpose and Authority.

A. The purpose of this rule is to enable the Division of Child and Family Services to collect fees for processing criminal background screenings. These screenings are for prospective foster and adoptive parents of children in state custody and other adults in the home as required by Public Law 109-248 and Section 78-3a-307.1. These screenings are also for employees of other licensed programs upon request of the Office of Licensing as authorized by Section 62A-2-120, as capacity allows.

R512-51-2. Fee Collection for Electronic Fingerprint Scanning.

A. It is the responsibility of Child and Family Services Regional Offices to collect fees for electronic fingerprint scanning for the purpose of criminal background screening for prospective foster and adoptive parents of children in state custody and other adults in the home and for employees of other Department of Human Services licensed programs.

B. The amount of the fee charged for electronic fingerprint scanning will be approved by the Board of Child and Family Services as required by Section 62A-4a-102 and will not exceed the amount being charged for the same service from the Department of Public Safety, Bureau of Criminal Identification.

R512-51-3. Fee Collection for Cost of Submission of Electronic Fingerprints for Criminal Background Check.

A. Child and Family Services has the option to collect fees for all or part of the actual cost of submission of electronic fingerprints for criminal background checks through the Department of Public Safety, Bureau of Criminal Identification and the Federal Bureau of Investigation.

B. Child and Family Services may elect to pay all or part of this cost for prospective foster and adoptive parents of children in state custody and other adults in the home, subject to legislative funding for this purpose.

C. Child and Family Services will not pay any of the cost of submission of electronic fingerprints for criminal background checks for employees of other Department of Human Services licensed programs, but may submit the electronic fingerprints upon verification of payment of those fees by the Office of Licensing or designee.

KEY: criminal background screening, fees, foster care, adoption
November 7, 2007 **Pub. L. No. 109-248**
78-3a-307.1

R527. Human Services, Recovery Services.
R527-928. Lost Checks.
R527-928-1. Responsibility for Collection and Investigation.

ORS shall be responsible for the collection and investigation of lost or stolen Department of Human Services checks. The term check and warrant are used interchangeably.

R527-928-2. Cashing Department of Human Services Issued Checks.

The Department of Human Services has specific policy concerning the replacement of department issued checks which have been reported as lost or stolen and on which a stop payment has been placed or where the check has been returned as a forged check to the financial institution or store.

The Department will only replace a department issued check for any bank or store if all of the following conditions have been met:

1. An employee of the cashing establishment personally observed the payee endorse the check. This includes the original payee and any third party to whom the payee may have made the check payable.

2. An employee of the cashing establishment examined a picture bearing governmental issued media presented by the payee and was satisfied that the person presenting the check is in fact the payee. Examples of acceptable identification are, a Utah Motor Vehicle Operator's License or a Utah Identification card. Identification must be obtained for all payees endorsing the check. The employee must note the source of the identification and the identification number on the check.

3. The employee who approved the cashing of the check must have made an identifying mark, such as initials, which will identify the employee in the event legal action is initiated at a later date.

4. The replacement check to the cashing establishment must be requested within 120 days of the date of notification of the stop payment.

KEY: public assistance programs, banks and banking, fraud
February 15, 2001 70A-3
Notice of Continuation November 29, 2007 35A-1-502
62A-11-104
62A-11-107
62A-11-201

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Form" means a standard document required by Division rule or other applicable law;

(g) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(h) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(i) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;

(j) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(k) "Region" means one of four geographical areas of the State of Utah referred to as central, eastern, northern or western;

(l) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;

(m) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(n) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(o) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(p) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(q) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(r) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(s) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Mental Retardation or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(9).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to

self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(14) or related conditions.

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered mental retardation or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to mental retardation or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver mental retardation or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver for Individuals with Developmental Disabilities or Mental Retardation.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of

daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver for Individuals with Physical Disabilities.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury;

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with mental retardation or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative

indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver for Individuals with Acquired Brain Injury.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Utah Administrative Code, Rule R414-302-5 and 42 CFR 435.910, 1997 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers
November 14, 2007 62A-5-103
Notice of Continuation November 29, 2007 62A-5-105

R539. Human Services, Services for People with Disabilities.
R539-11. Family Preservation Pilot Program.
R539-11-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for the Division's pilot program to provide Family Preservation Services for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.2

R539-11-2. Definitions.

Terms used in this rule are defined in Section 62A-5-101, and

"Person": Individual who meets eligibility requirements in Rule R539-1.

"Active Status": Has a current Needs Assessment Score on Division wait list.

"Participate fully": Follow through with assignments and accept guidance and clinical judgment regarding treatment issues of Professional and clinical team. Also to complete Self Inventory Assessments.

"Time-limited": Workshops run for six weeks. Follow up services will not exceed six weeks following the end of the workshops. Total time of participation for any one family is three months.

R539-11-3. Person's Eligibility.

(1) A person who meets the eligibility requirements listed in Section 62A-5-103.2 may participate in the Family Preservation Pilot Program provided that:

the person agrees to enter services under the conditions listed in Section 62A-5-103.2,

the person agrees to use an approved provider.

The person is currently in active status on the Division wait list.

R539-11-4. Family's Eligibility.

(1) A family who has a person who meets the eligibility requirements listed in Rule R539-1 living in their home, may participate in the Family Preservation Pilot Program provided:

The family agrees to have their wait list needs assessment re-evaluated approximately six months after completing participation in pilot program.

The family agrees to sign a participation agreement agreeing to participate fully in pilot program.

The family agrees to time-limited services.

The family agrees to access services that can be purchased from providers, through Division contracted providers.

R539-11-5. Priority.

People will be served in the order in which they apply to participate in the pilot program in the respective geographical area in which they live and as space becomes available in workshops.

R539-11-6. Service Brokering.

(1) Persons eligible for the Supported Employment Pilot Program may also use Service Brokering services.

KEY: disabilities
November 14, 2007 62A-5-103.2

R590. Insurance, Administration.
R590-141. Individual and Agency License Lapse and Reinstatement Rule.
R590-141-1. Authority.

This rule is promulgated pursuant to Subsections 31A-23-216(3) and 31A-26-213(3), that authorize the commissioner to write a rule prescribing license renewal and reinstatement procedures for licensees under Chapters 23 and 26.

R590-141-2. Scope.

This rule applies to all individuals and agencies previously licensed under this chapter who did not renew their license on or prior to the license expiration date.

R590-141-3. Rule.

A. The individual and agency license renewal process shall be as follows:

(1) Renewal notices shall be mailed to the licensee's business address as shown on the records of the Insurance Department. Licensees who fail to notify the department when their business address changes may face administrative penalties.

(2) Licenses shall lapse if they are not renewed on or prior to the license expiration date.

(3) Individuals and agencies with lapsed licenses may not engage in the business of insurance during any period between the date of expiration of the license and the date of reinstatement of that license.

(4) Lapsed licenses can be reinstated subject to the provisions outlined below.

B. Reinstatement of Lapsed Individual Licenses.

(1) For reinstatement within the first month following the license expiration date:

(a) the individual shall complete all continuing education requirements;

(b) the individual shall pay all current and past due fees - renewal, continuing education, etc;

(c) the individual shall pay a penalty fee equal to the renewal fee; and

(d) no agency designations or appointments shall be canceled nor will agencies and insurers be notified of the non-renewal during this one month period.

(2) For reinstatement during the time between one and six months following the license expiration date, the individual shall:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc;

(c) pay a penalty fee equal to the renewal fee; and

(d) complete new producer contracts, new agency designations and new insurer appointments before the reinstated licensee can resume doing business. Agencies and insurers will have been notified that the licensee's license had lapsed.

(3) For reinstatement during the time between seven months and 12 months following the license expiration date, the individual shall:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc;

(c) pay a penalty fee equal to the renewal fee plus $50; and

(d) complete new producer contracts, new agency designations and new insurer appointments before the reinstated licensee can resume doing business. Agencies and insurers will have been notified that the licensee's license lapsed.

(4) For reinstatement during the time between 13 months and 24 months following the license expiration date, the individual shall:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc;

(c) take and successfully pass the proper agent licensing examination;

(d) pay a penalty fee equal to the renewal fee. If the applicant is exempt from licensing examination, the applicant shall pay a penalty fee equal to the renewal fee plus $75; and

(e) complete new producer contracts, new agency designations and new insurer appointments before the reinstated licensee can resume doing business. Agencies and insurers will have been notified that the licensee's license lapsed.

(5) A license that has not been reinstated within 24 months following its expiration date cannot be reinstated. An application for a new license must be made and the applicant must comply with all the requirements applicable to a new license.

C. Reinstatement of Lapsed Agency Licenses.

(1) For reinstatement within the first month following the license expiration date:

(a) the agency shall pay all current and past due fees - renewal, etc;

(b) the agency shall pay a penalty fee equal to the renewal fee; and

(c) No agency designations or insurer appointments shall be canceled nor will agency designees and insurers be notified of the non-renewal during this one month period.

(2) For reinstatement during the time between one and 24 months following the license expiration date, the agency shall:

(a) pay all current and past due fees - renewal, etc; - and

(b) pay a penalty fee equal to the renewal fee plus $50.

(c) complete new contracts and appointments with insurers and new designations for agents representing the agency before the reinstated licensee can resume doing business. Designees and insurers will have been notified that the licensee's license lapsed.

(3) A license that has not been reinstated within 24 months following its expiration date cannot be reinstated. An application for a new license must be made and the applicant must comply with all the requirements applicable to a new license.

(4) In the event an agency fails to renew or reinstate its license within the prescribed time, the name of the agency shall not be available for use for a period of three years from the date the license lapsed.

R590-141-4. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

May 1, 1998	**31A-2-201**
Notice of Continuation November 6, 2007	**31A-23-216**
	31A-26-213

R590. Insurance, Administration.
R590-152. Health Discount Programs and Value Added Benefit Rule.
R590-152-1. Authority.

This rule is promulgated by the commissioner under 31A-8a-210, which authorizes the commissioner to enforce Chapter 8a and protect the public interest.

R590-152-2. Purpose and Scope.

(1) The purpose of this rule is to describe initial and renewal license procedures, fees, and other authorized charges, required and prohibited practices, advertising and marketing activity, disclosure requirements, provider agreements, dispute resolution, and record keeping.

(2) This rule applies to health discount programs, health discount program operators, and health discount program marketers.

(3) This rule applies to a value added benefit provided by a person licensed under Title 31A, Chapters 7 or 8.

R590-152-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-8a-102 and the following:

(1) "Administration of the health discount program" means the processes to solicit members, enroll members, maintain the membership, resolve disputes with members, disenroll members, and collect or refund fees and other authorized charges.

(2) "Authority to do business in this state" means having other applicable licenses as required by statute and operating within the scope of such licenses.

(3) "Health discount program marketer" means a person or entity, including a private label entity, that places its name on and markets or distributes a health discount program but does not operate the marketed or distributed health discount program.

(4) "Private label entity" means an entity that purchases a health discount program from a health discount program operator and issues or markets the obtained health discount program under the private label entity's name or logo.

(5) "Prominently" means not less than 14-point type or no smaller than the largest type on the page if larger than 12 point type.

R590-152-4. General Information.

(1) The commissioner may examine, audit, or investigate the business and affairs of any health discount program operator or a licensed health discount program marketer or any person the commissioner believes may be operating or marketing a health discount program.

(2) A health discount program, a health discount program operator, or a health discount program marketer that offers an insurance benefit as part of a health discount program or in addition to a health discount program must comply with statutes and rules pertaining to the solicitation, negotiation, and sale of insurance in Utah that are otherwise applicable to the altering of such benefit.

R590-152-5. Licensing (Application, Initial, Renewal).

(1) The following must be licensed prior to offering a health discount program:

(a) a health discount program operator; or

(b) a health discount program marketer that markets health discount programs from more than one health discount program operator.

(2) The following do not require a license as a health discount program operator or health discount program marketer:

(a) a licensee licensed under Chapters 7 or 8 if only offering a value added benefit;

(b) a health discount program marketer or private label entity issuing or selling one of more health discount programs obtained from a single health discount program operator.

(3) The "Application for Health Discount Program Operator or Health Discount Program Marketer" must be completed and submitted with the appropriate fee.

(4) The commissioner may deny an application from a health discount program operator or a health discount program marketer if the applicant would not be in compliance with Chapter 31A-8a because the applicant, in this or any other jurisdiction, for a matter dealing with a health discount program is:

(a) under investigation; or

(b) has been found in violation of a statute or regulation.

(5) A licensed health discount program operator must notify the commissioner each time a health discount program marketer or private label entity is added or deleted during the annual licensure period.

(6) Annual licensure period.

(a) A license issued under this section is for one annual period which expires each December 31st.

(b) A licensee desiring to continue to do business in this state must renew its license prior to December 31st each year by submitting an Application for Health Discount Program Operator or Health Discount Program Marketer and paying the required fee.

R590-152-6. Fees and Other Authorized Charges.

(1) A health discount program operator may provide discounts or free services through contracted providers to subscribers in exchange for a periodic payment to the program or as a benefit in connection with membership in a particular group.

(2) A health discount program operator may charge:

(a) a non-refundable one-time enrollment charge; and

(b) a refundable periodic fee.

(3) A health discount program operator that charges fees for a time period in excess of one month must, in the event of cancellation of the membership by the health discount program operator, make a pro-rata refund of the periodic fees paid by the member.

R590-152-7. Required Practices.

(1) A health discount program operator must have an active toll-free telephone number for members to call.

(2) Face to face, paper, telephone, and electronic communications with clients or potential clients must state that the health discount program is a discount plan and not insurance.

(3) When a health discount program operator or a health discount program marketer sells a health discount program together with any other product that can be purchased separately, including insured benefits, an itemized list of the fees or premiums for each individual product must be provided in writing to the client at solicitation.

(4) Information available to a health discount program member via a health discount program operator's web page must be current at least monthly.

R590-152-8. Value Added Benefit.

(1) Any value added benefit must actually exist and a copy of the contract verifying such existence must be available upon request to the commissioner.

(2) Prior to any offering of a value added benefit, a person licensed under Title 31A, Chapter 7 or 8, shall:

(a) file with the commissioner a value added benefits list that includes the following:

(i) the insurer's name and address;

(ii) the insurer's policy form number(s) to which the value added benefit applies; and

(iii) a description of the benefits offered.

(b) comply with Sections R590-152-10 and 11, if providing a member discount card.

R590-152-9. Prohibited practices.

(1) A health discount program operator may not make any payments to providers for:

(a) participation in the health discount program;

(b) capitation payments;

(c) signing fees;

(d) bonuses; or

(e) other forms of compensation.

(2) A health discount program operator may not offer any insurance benefits unless licensed as an insurance producer and contracted and appointed by the insurer providing the insurance benefits.

R590-152-10. Advertising and Marketing.

(1) The format and content of any advertisement shall be sufficiently complete and clear as to avoid deceiving or misleading the reader, viewer, or listener.

(2) An advertisement of any insured product or benefit must comply with applicable provisions of Subsections 31A-23a-102 (12) and (13) and Rule R590-130, Rules Governing Advertisements of Insurance.

(3) A health discount program operator must approve in writing all advertisements, marketing materials, brochures, and discount cards used by a health discount program marketer marketing a health discount program operator's health discount program.

(4) All advertisements, marketing materials, brochures, and discount cards used by a health discount program operator and the health discount program operator's health discount program marketer and by a health discount program marketer marketing more than one health discount plan operator's health discount program must be available to the commissioner upon request.

(5) The health discount program operator must have an executed written agreement with a health discount program marketer prior to the health discount plan marketer marketing, promoting, selling, or distributing a health discount program.

R590-152-11. Disclosures.

(1) A health discount program operator must provide the disclosures required by Section 31A-8a-205.

(2) The membership card shall prominently state: "This is not health insurance."

(3) Disclosure materials provided to a purchaser or potential purchaser must include:

(a) membership materials;

(b) new enrollee information;

(c) a printed list of providers, or access to the health discount program operator's web page, that have agreed by written contract with the health discount program to accept the program;

(d) a statement that "A health discount program member is responsible for the entire payment of their medical or health care bill after the discount is applied."; and

(e) the complete terms and conditions of any refund policy.

(4) A health discount program operator or health discount program marketer must:

(a) provide a purchaser a 30-day money back guarantee, which allows the purchaser to terminate the contract and receive a full refund of any periodic fee paid; and

(b) the 30-day period must commence when the purchaser receives the membership materials.

R590-152-12. Contracts.

(1) A provider agreement between a health discount program operator and a provider network shall require:

(a) the provider network to have a written agreement with each provider in the network authorizing the provider network to contract with a health discount program operator on behalf of the provider; and

(b) the health discount program operator to inform each provider within the contracted provider network with information about the health discount program.

(2) A provider agreement between a health discount program operator and another health discount program operator that has contracted with a provider network shall require the contract with the provider network to comply with Subsection (1).

R590-152-13. Dispute Resolution Procedures.

A health discount program operator must:

(1) file its dispute resolution procedures with the commissioner pursuant to Section 31A-8a-203; and

(2) comply with its filed dispute resolution procedures.

R590-152-14. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-152-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-152-16. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance, medical discount program
October 31, 2007 31A-1-103
Notice of Continuation November 13, 2007 31A-2-201

R590. Insurance, Administration.
R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
R590-153-1. Authority.

This rule is promulgated pursuant to Section 31A-2-201(3)(a), in which the commissioner is empowered to make rules to implement the Insurance Code, and pursuant to the specific authority of Section 31A-23a-402(8), which authorizes the commissioner to define unfair methods of competition or any other unfair or deceptive act or practice in the business of insurance.

R590-153-2. Purpose.

The purpose of this rule is to identify certain practices, which the commissioner finds provide unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include, but are not limited to, the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title insurer, agency or producer.

R590-153-3. Scope.

This rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R590-153-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

A. "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(1) buying or selling interests in real property;

(2) making loans secured by interests in real property; and

(3) shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, sub-dividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.

B. "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

C. "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

D. "Business meals" shall include, but are not limited to, breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals rise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

E. "Official Trade Association Publication" means:

(1) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(2) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

F. "Business Activities" shall include, but are not limited to, sporting events, sporting activities, music and art events. In no case shall such business activities rise to the level of ceremonies, for example award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

G. "Bona fide real estate transaction" means:

(1) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property, or

(2) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any client, either directly or indirectly, except as specifically allowed in Section R590-153-6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23a-402:

A. The furnishing of a title insurance commitment without one of the following:

(1) sufficient evidence in the file of the title insurer, agency or producer that a bona fide real estate transaction exists; or

(2) payment in full at the time the title insurance commitment is provided.

B. The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

C. Furnishing escrow services pursuant to Section 31A-23a-406, for a charge less than the charge filed pursuant to Section 31A-19a-209(5) or the filing of charges for escrow services with the commissioner, which are less than the actual cost of providing the services.

D. Waiving all or any part of established fees or charges for services, which are not the subject of rates filed with the commissioner.

E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale".

F. Furnishing services not reasonably related to a bona fide title insurance or escrow, settlement, or closing transaction, including, but not limited to computer services, non-related delivery services, accounting assistance, legal counseling.

G. The paying for, furnishing, or waiving all or any part of the rental or lease charge for space, which is occupied by any client.

H. Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

I. Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency or producer, for example, secretary, clerk, messenger or escrow officer, to any client.

J. Paying for all or any part of the salary of a client or an employee of any client.

K. Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company.

L. Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any client to structure or complete a particular transaction.

M. Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value

for an activity, except as allowed under Subsection R590-153-6(F) of a client. Activities include, but are not limited to "open houses" at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

N. Sponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R590-153-6(C), or otherwise providing things of value for promotional activities of a client. Title insurers, agencies or producers may attend activities of a client if there is no additional cost to the title insurer, agency or producer other than their own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to clients or others attending the function.

O. Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions except as provided in Subsection R590-153-6(H). A letter or card in these instances will not be interpreted as providing a thing of value.

P. Providing either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the placement or steering of title insurance business by such lending institution. This does not preclude transactions with lending institutions, which are in the normal course of business.

Q. Furnishing any part of a title insurer's, agency's or producer's facilities, for example, conference rooms or meeting rooms, to a client or trade association without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

R. Furnishing information packets, listing kits, "farm" packages, reports, or any form of title evidence without first filing a specimen form copy with the commissioner and specifying a rate for which the form is available. The rate may not be less than the actual cost of producing the information and the material furnished.

S. Paying for any advertising on behalf of a client.

T. Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurer, agency or producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency or producer.

U. A direct or indirect benefit provided to a client which is not specified in Section R590-153-6 below, will be investigated by the department for the purpose of determining whether it should be defined by the commissioner as an unfair inducement under Section 31A-23a-402(8).

V. Donations to charitable organizations must:

(1) not be paid in cash; and

(2) if paid by negotiable instrument, be made payable only to the charitable organization; and

(3) be distributed directly to the charitable organization; and

(4) not provide any benefit to a client.

W. Title insurers, agencies and producers who have ownership in, or control of, other business entities may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R590-153-6. Permitted Advertising and Business Entertainment.

A. A title insurer, agency or producer may furnish the following without charge, and without additions, addenda or attachments which may be construed as reaching conclusions of the insurer, agency or producer regarding matters of marketable ownership or encumbrances:

(1) A copy of an existing plat map; or

(2) Tax information covering a specific parcel of real estate, for example, tax identification number, assessed owner, assessed value of land and improvements, or the latest tax amount; or

(3) other information regarding real property which the county recorder's office provides to the public free of charge, or at a nominal charge, and in the exact format and content as provided by the county recorder's office.

B. Advertisements by title insurers, agencies or producers must comply with the following:

(1) The advertisement must be purely self-promotional.

(2) Advertisements may not be placed in a publication, including an Internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client except as allowed under R590-153-6 (B)(3).

(3) Advertisements in official trade association publications are permissible as long as any title insurer, agency or producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

C. A title, insurer, agency or producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title insurer, agency or producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency or producer may not expend more than $15 per guest per open house. The open house may take place on or off the title insurer's, agency's or producer's premises but may not take place on the client's premises.

E. A title insurer, agency or producer may distribute self-promotional items having a value of $5 or less to clients, consumers and members of the general public. These self-promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

F. A title insurer, agency or producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

(1) The person representing the title insurer, agency or producer must be present during the business meal or business activity.

(2) There is a substantial title insurance business discussion directly before, during or after the business meal or business activity.

(3) The total cost of the business meal, the business activity, or both is not more than $100 per person, per day.

(4) No more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency or producer in a single day.

(5) The entire business meal or business activity may take place on or off the title insurer's, agency's or producer's premises, but may not take place on the client's premises.

G. A title insurer, agency or producer may conduct educational programs under the following conditions:

(1) The educational program shall address only title insurance, escrow or topics directly related thereto.

(2) The educational program must be of at least one hour duration.

(3) For each hour of education $15 or less per person may

be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a client per calendar quarter.

H. A title insurer, agency or producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of his/her immediate family with flowers or gifts not to exceed $75.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

R590-153-7. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R590-153-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
August 8, 2007 31A-2-201
Notice of Continuation November 9, 2007 31A-23a-402

R590. Insurance, Administration.
R590-242. Military Sales Practices.
R590-242-1. Authority.

This rule is promulgated pursuant to Subsection 31A-23a-402(8)(a) and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-242-2. Purpose.

(1) The purpose of this rule is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-242-3. Scope.

This rule shall apply only to the solicitation, negotiation, or sale of any life insurance product, including annuities, by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

R590-242-4. Findings.

The commissioner finds that the acts prohibited by this rule are misleading, deceptive, unfairly discriminatory, and provide an unfair inducement.

R590-242-5. Exemptions.

(1) This rules shall not apply to solicitations, negotiations, or sales involving:

(a) credit insurance;

(b) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

(c) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

(d) individual stand-alone health policies, including disability income policies;

(e) contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

(f) life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

(g) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) prearranged funeral contracts.

(2) Nothing herein shall be construed to nullify the ability of nonprofit organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(3) For purposes of this rule, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this rule in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

R590-242-6. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

(1) "Active Duty" means full-time duty in the active military service of the United States and includes members of the reserve component, National Guard and Reserve, while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) "Department of Defense (DoD) Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door to Door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

(4) "General Advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(5) "Known" or Knowingly" means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(a) is a service member; or

(b) is a service member with a pay grade of E-4 or below.

(6) "Military Installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(7) "MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(8) "Service Member" means any active duty officer, commissioned and warrant, or enlisted member of the United State Armed Forces.

(9) "Side Fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities, by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(b) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(c) a premium deposit fund which:

(i) contains only premiums paid in advance which

accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(10) "Specific Appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(11) "United State Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

R590-242-7. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation.

(1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation, negotiation, or sale of life insurance are declared to be false, misleading, deceptive or unfair:

(a) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices or advertisements.

(g) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

R590-242-8. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location.

(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. Section 4301 et seq. and the rules promulgated thereunder; and

(ii) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subsection 7(1)(b).

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

(f) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation, negotiation, or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(a) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity.

(i) Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor".

(ii) Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning.

(iii) Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial

Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers, which is false, misleading or deceptive.

(c) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

(a) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.

(e) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(i) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(ii) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of R590-177, Life Insurance Illustrations Rule, shall be deemed sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and survivors or dependents.

(ii) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(c) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(i) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(iii) which, by default, diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(d) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with 31A-22-408, Standard Nonforfeiture Law for Life Insurance.

(e) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage which may be excluded.

R590-242-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-242-10. Enforcement Date.

The commissioner will begin enforcing the provisions of

this rule on January 1, 2008.

R590-242-11. Severability.

If any provision or portion of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

KEY: insurance, military sales practices
November 16, 2007 **31A-2-201**
31A-23a-402

R602. Labor Commission, Adjudication.
R602-3. Procedure and Standards for Approval of Assignment of Benefits.
R602-3-1. Policy, Scope and Authority.

A. Policy. Utah's workers' compensation system provides disability compensation to injured workers as a partial replacement for lost wages. These periodic payments allow injured workers to provide for the ongoing necessities of life--food, shelter and clothing--not only for themselves, but for their dependents. These periodic payments also prevent injured workers from becoming charges on public welfare or private charity.

The 2007 Utah Legislature reaffirmed and strengthened the foregoing policy of the workers' compensation system by enacting Senate Bill 109, "Transfers of Structured Settlements." Senate Bill 109 amended Section 34A-2-422 of the Utah Workers Compensation Act to specifically prohibit any transfer of workers' compensation payment rights unless the proposed transfer is first submitted to the Utah Labor Commission and approved by the Commission.

B. Scope. This rule establishes the procedural and substantive requirements for Commission approval of any request for transfer of workers' compensation payment rights. The Commission will not approve any transfer of workers' compensation payment rights in the absence of strict compliance with all procedural and substantive requirements of the Utah Workers' Compensation Act and this rule.

C. Statutory authority. The Commission enacts this rule pursuant to Subsection 34A-1-104(1) and Section 34A-1-304 of the Utah Labor Commission Act, Section 34A-2-422 of the Utah Workers' Compensation Act, and Subsection 63-46a-3(2) of the Utah Administrative Rulemaking Act.

R602-3-2. Benefits Subject to Assignment.

A. Commission approval a precondition to any action to transfer benefits. Subsection 34A-2-422(3) prohibits any transfer, or action to transfer, workers' compensation payment rights without prior Commission approval. The Commission will not approve any proposed transfer that includes an advance of funds or property, or other similar action, without prior Commission review.

B. Transfer limited to benefits that are fixed and certain. Pursuant to Subsection 34A-2-422(3)(c), Commission approval of a transfer of workers' compensation payment rights is a "full and final resolution" of such payment rights. The Commission will, therefore, approve transfer of only those payment rights that are fixed and certain as a matter of law. The Commission will not approve the transfer of payment rights that are subject to modification under any provision of the Utah Workers' Compensation Act or other applicable law.

C. New petition required for additional transfers. A petition may not request Commission approval of future, open-ended or follow-up transfers of payment rights. A new petition must be submitted for approval of any such additional transfers.

D. Medical benefits. An injured worker is entitled to continuing medical care necessary to treat his or her work-related injuries. These medical benefits are, by their nature, contingent on the injured worker's future medical condition and progress in medical and pharmacological science. For these reasons, medical benefits are not "fixed and certain," and the Commission will not approve any request for transfer of medical benefits.

R602-3-3. Procedure for Requesting Approval.

A. Petition. The transferee shall fully complete the Commission's "Petition for Approval of Transfer of Payment Rights" form. The transferee shall then file the completed petition with the Commission's Adjudication Division. The Adjudication Division shall return to the transferee any petition that is not fully completed, signed, and accompanied with all required documentation.

B. Documentation. Subsection 34A-2-422(3)(b)(ii)(A) requires that the transferor of workers' compensation payment rights receive adequate notice of the workers' compensation benefits proposed to be transferred, as well as an explanation of the financial consequences of, and alternatives to, the proposed transfer. The Commission will therefore require the following documentation to accompany every Petition for Approval of Transfer of Payment Rights.

1. Notice and explanation. The transferee shall provide written notice and explanation of the proposed transfer to the transferor in writing, with receipt confirmed by the transferor's signature.

a. The notice and explanation must be in plain language. If the transferor is of limited English proficiency, the notice and explanation must also be provided in writing in the transferor's native language.

b. The notice and explanation must contain each of the following items in full detail:

i. A description of the specific workers' compensation payment rights proposed to be transferred;

ii. An explanation of the legal effect of the transfer;

iii. An explanation of all alternatives to the proposed transfer; and

iv. A recommendation that the transferor obtain independent professional advice regarding the advisability of the proposed transfer and the terms of the proposed transfer.

2. Disclosure of financial information. The transferee shall provide written disclosure of financial information regarding the proposed transfer to the transferor, with receipt confirmed by the transferor's signature.

a. The disclosure of financial information must be in plain language. If the transferor is of limited English proficiency, the disclosure must also be provided in writing in the transferor's native language.

b. The disclosure of financial information must contain each of the following items full detail:

i. The amount and due date of each payment to be transferred;

ii. The sum of all payments to be transferred;

iii. The present value of the payments to be transferred, computed in the same manner and using the same discount rate by which future annuity payments are discounted to present value for federal estate tax purposes;

iv. The gross amount payable by the transferee in exchange for the payments to be transferred;

v. The implied annual interest rate that the transferor would be paying if the transfer were viewed as a loan to the transferor of the net amount payable by the transferee, to be paid in installments corresponding to the transferred payments.

vi. An itemized listing any amount to be deducted from the gross payment, with detailed explanation of the reason for such deduction and the method for computing the deduction;

vii. The net amount to be paid to the transferee;

viii. The amount and method of calculation of any penalties or liquidated damages for which the transferor might be liable under the transfer agreement; and

ix. A statement of the tax consequences of the transfer.

3. Source of workers' compensation payment rights. The transferee shall provide an authenticated copy of the document(s) that establish the transferor's right to the workers' compensation payment rights that are proposed to be transferred.

4. All agreements between the transferor and transferee. All agreements between the transferor and transferee must be in writing and signed by both the transferor and the transferee. The transferee will provide true and correct copies of all such documents.

C. Notice to other interested parties. After the Adjudication Division has received a petition for approval of transfer of payment rights, and has determined that the petition is complete and is supported by all necessary documentation, the Division will mail copies of the petition and supporting documentation to the following:

1. Each party and attorney who participated in the underlying workers' compensation claim;

2. If the payment right to be transferred arises under a structured workers' compensation settlement, the issuer of the annuity contract that funds the settlement;

3. Any other party having rights or obligations with respect to the payment rights proposed to be transferred;

4. An ombudsman designated by the Industrial Accidents Division for receipt of such petitions; and

5. Any other individual or entity the Division believes may have an interest in the proposed transfer.

D. Hearing. All Petitions for Approval of Transfer of Payment Rights will be assigned to the Director of the Adjudication Division for hearing.

1. The Director will conduct a formal evidentiary hearing on each petition to determine whether the petition should be approved. The hearing will be conducted in accordance with the requirements of the Utah Administrative Procedures Act.

2. No hearing on the merits of a petition will be scheduled prior to 60 days after the notices required by III.C of this rule have been mailed to all parties entitled to such notice.

3. Notice of hearing on the merits of a petition shall be provided to the transferor, the transferee, their attorneys, and all parties listed in III.C.1 through 4 of this rule.

4. The Director will conduct the hearing in such manner as the Director deems proper to obtain all information that may be material to approval or rejection of the proposed transfer.

E. Decision. After hearing, the Director will issue a written decision approving or denying the petition. The Director may approve a petition only if the Director finds:

1. The petition has been submitted in proper form with all required documentation;

2. The notice and explanation required by III.B.1 of this rule and the disclosure of financial information required by III.B.2 of this rule are correct, adequate, and understood by the transferor;

3. The agreement(s) between the transferor and transferee does not include any abusive provisions that are against the transferor's best interests. "Abusive provisions" include, but are not limited to, the following:

a. The transferor's confession of judgment or consent to entry of judgment;

b. Choice of forum or choice of law provisions requiring resolution of disputes in a forum other than the courts and administrative agencies of the State of Utah, or under the laws of a jurisdiction other than Utah; or

c. Requirements that transferors indemnify transferees or reimburse transferees for costs or expenses incurred in disputes between transferors and transferees.

4. The proposed transfer is in the best interest of the transferor, specifically taking into account:

a. The transferor's need for a continuing source of income to provide for future necessities;

b. The needs of the transferor's dependents for a continuing source of support from the transferor to provide for future necessities;

c. Whether the transferor's intended uses of the funds obtained as a result of the transfer are prudent and consistent with the underlying purposes of the workers' compensation system;

d. Whether the transferor possesses the ability to manage, preserve and properly apply the funds to be obtained through the transfer; and

e. Whether other alternatives exist that will better meet the legitimate needs of the transferor and/or satisfy the objectives of the workers' compensation system.

F. Appeal. Any interested party who has participated in the formal evidentiary hearing conducted pursuant to III.D of this rule may request agency review of the Director's decision by following the procedures established in Section 63-46b-12 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

KEY: workers' compensation, administrative procedures, hearings, settlements

November 21, 2007 **34A-1-104(1)**
34A-4-304
34A-2-422
63-46a-3(2)

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 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 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.

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2007, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2007, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2007, is incorporated by reference.

4. FR Vol. 72, No. 30, Wednesday, February 14, 2007, Pages 7136 to and including 7221 "Electrical Standard; Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2007, edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual

member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of

employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the

probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such

workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized

representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of

receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent

Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This

includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if

the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable

principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination

of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of

the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this

section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each

analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to

identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and

information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
June 22, 2007 **34A-6**
Notice of Continuation November 2, 2007

R614. Labor Commission, Occupational Safety and Health.
R614-2. Drilling Industry.
R614-2-1. Drilling Industry -- Administrative Provision.

A. Agency.

Labor Commission, Division of Occupational Safety and Health.

B. Authority.

Title 34A, Chapter 6, Utah Occupational Safety and Health Act of 1973.

C. Scope.

1. Section 34A-6-202 establishes the authority, method, and procedures for issuance of standards by the Administrator of UOSH. The standards contained herein govern safety and health for the drilling industry and related services.

2. The UOSH Administrator, following a significant number of inspections of drilling activities, has found many issues unique to the industry which require they be addressed separately and apart from the Utah Rules and Regulations General Industry Standards.

3. Further, the collection of statistical inferences by the Utah Occupational Safety and Health Statistical division indicates a substantial need for occupational safety and health standards for drilling and related services.

D. Effective Date.

January 15, 1980.

E. Variance From Safety and Health Standards.

Variances from standards which are or may be published in this part may be requested under Subsection 34A-6-202(2)(d) of the Utah Occupational Safety and Health Act of 1973. Procedures for the granting of variances or related relief are those published as R614-1-9.

F. Adoption of Existing Standards.

The provisions of this part adopt and extend the applicability of R614 and 29 CFR 1910 and 29 CFR 1926.

G. Inspections--Right of Entry.

1. It shall be a condition of each place of employment where work is performed that the Administrator of the Utah Occupational Safety and Health Act or any authorized representative shall have the right of entry to any site for the following purposes:

2. To inspect or investigate the matter of compliance with the safety and health standards contained in the General Industry Standards and the Oil, Gas, Geothermal and Related Services Standards.

3. For the purpose of carrying out his investigative duties under the Act, the Administrator of the Utah Occupational Safety and Health Act may, by agreement, use with or without reimbursement, the services, personnel, and facilities of any state Agency.

H. Duties of Employers and Employees.

Section 34A-6-201 defines duties of employers and employees.

I. Safety Training and Education.

1. The Administrator of the Utah Occupational Safety and Health Act shall establish and supervise programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe conditions in employments covered by this act.

2. Employer Responsibility.

a. The employer should avail himself of the safety and health training programs the Administrator provides.

b. The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environments to control or eliminate any hazards or other exposure to illness or injury.

c. In job site areas where harmful plants or animals are present, employees who may be exposed shall be instructed regarding the potential hazards, and how to avoid injury, and the first aid procedures to be used in the event of injury.

J. Reporting Requirements.

Shall meet the requirements of R614-102-13.

K. Incorporation by Reference.

1. 29 CFR 1910 and 1926 and standards of the American National Standards Institute, National Fire Protection Association, National Electrical Code, and other consensus standards are incorporated by reference, or when referenced in this UOSH standard, shall have the same force and effect as other standards, rules, or regulations.

2. Consensus standards and any changes in the referenced standards are available for examination at the Occupational Safety and Health Division, Labor Commission, as listed in the current public telephone directory.

L. General Drilling Rules.

1. Surface casing shall be run to reach a depth to prevent blowouts or uncontrolled wells. In areas where pressures and formations are unknown, surface casing shall be of sufficient size to permit the use of an intermediate string or strings of casing. Surface casing shall be set in or through an impervious formation and shall be cemented by the pump and plug or displacement or other approved method with sufficient cement to fill the annulus to the top of the hole. If cement is not circulated to surface during the primary operation, the drilling owner/operator shall perform cemented operations to assure that the annular space from the casing shoe to the surface is filled with cement.

2. The cemented casing string shall stand under pressure until the cement has reached a compressive strength of 300 pounds per square inch; providing, however, that no further operation shall be commenced until the cement has been in place at least 8 hours. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held.

3. Setting depths of all casing string shall be determined by taking into account formation fracture gradients and the maximum anticipated pressure to be maintained within the well bore.

4. If and when it becomes necessary to run a production string, such string shall be cemented by the pump and plug method, and shall be properly tested by the pressure method before cement plugs are drilled.

5. Natural gas which may be encountered in a substantial quantity in any section of a cable-tool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or casing, or other approved method and confined to its original source. Any gas escaping from the well during drilling operations shall be, so far as practicable, conducted a safe distance from the well site and burned in accordance with the Rules and Regulations of the Environmental Quality Department of the State, or otherwise safely disposed of.

M. Site Clearing and Roads, General Requirements.

1. Employees engaged in site clearing shall be protected from hazards of irritant and toxic plants, and suitably instructed in the first aid treatment available.

2. All equipment used in site clearing shall be equipped with rollover guards in accordance with 29 CFR 1926.1000. In addition, rider-operated equipment shall be equipped with an overhead and rear canopy guard meeting the following requirements:

a. The overhead covering on this canopy structure shall be covered with not less than 1/8 inch steel plate or 1/4 inch woven wire mesh with openings no greater than one inch or equivalent.

b. The opening in the rear of the canopy structure shall be covered with no less than 1/4 inch woven wire mesh with openings no greater than one inch.

3. On single lane private roads with two-way traffic, arrangements shall be provided with adequate turnouts. Where adequate turnouts are not practical, a control system shall be

provided to prevent vehicles from meeting on such single lane roads.

R614-2-2. Drilling Industry -- Definition of Terms.

A. General Terms.

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Utah Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

B. Industry Terms.

1. "Accumulator" - On a drilling rig, the nitrogen and hydraulic oil for closing the blowout preventer in an emergency is kept in an accumulator.

2. "Acidizing" - The treatment of oil-bearing limestone or other formations by chemical reaction with acid in order to increase production. Hydrochloric or other type acid is injected into the formation under pressure, bringing about an enlargement of the pore spaces and passages through which the reservoir fluids flow. The acid is held under pressure for a period of time and then pumped out; the well is swabbed and put back into production. Chemical inhibitors are combined with the acid to prevent corrosion of the pipe.

3. "A-frame" - A form of derrick or crane used to handle heavy loads.

4. "Air Drilling" - Drilling using air or gas as the circulating medium.

5. "Anchor, Deadline" - Holding the deadline to the derrick or substructure.

6. "Annular Space" - The space surrounding pipe suspended in the wellbore. The outer wall of the annular space may be an open hole or it may be a string or larger pipe.

7. "Approved" - sanctioned, endorsed,accredited certified, or accepted by a duly constituted and recognized authority or agency.

8. "Authorized Person" - A person approved or assigned by the employer to a specific type of duty or duties or to be at a specific location or locations at the job-site.

9. "Back-up Line (Snub Line)" - A wire rope, one end of which is fastened to the end of a pipe tong handle and the other end secured to hold the tongs stationary while such tongs are in use.

10. "Back-up Post" - A post, column or stanchion secured to the derrick, derrick floor or derrick foundation, the purpose of which is to make secure the dead end of the back-up line.

11. "Back-up Tong" - The name applied to the drill pipe tong suspended in the derrick and used to hold a section of drill pipe while another section is unscrewed from it by use of another tong.

12. "Barricade" - An obstruction to deter the passage of persons or vehicles.

13. "Berm" - A pile or mound of material capable of restraining a vehicle.

14. "Bit" - The cutting element attached to the bottom of the drill stem. These are broken down into three general categories: roller bits, usually having three rolling cones with milled teeth or inserts; diamond bits using diamonds for cutting; and drag bits with fixed blades.

15. "Bleed" - To drain off liquid or gas, generally slowly, through a valve called a bleeder. To bleed down or bleed off, means a controlled release of the pressure of a well or of pressurized equipment.

16. "Block" - In mechanics, one or more pulleys or sheaves mounted to rotate on a common axis; any assembly of pulleys on a common frame work. The crown block is an assembly of sheaves mounted on beams at the top of the derrick. The drilling line, is reeved over the sheaves of the crown block alternately with the sheaves of the traveling block, which is hoisted and lowered in the derrick by means of the drilling line.

17. "Blowout" - A sudden, violent escape of gas and oil (and sometimes water) from a well.

18. "Blowout Preventer" - A device attached immediately above the casing to control pressures and prevent escape of fluids from the annular space between the drill pipe and casing or shut off the hole if no drill pipe is in the hole, should a kick or blowout occur.

19. "Board" -A platform installed in the derrick approximately 90 feet above the derrick floor. The derrickman works on this board while the pipe is being hoisted from or lowered into the wellbore.

20. "Boom" - a movable arm of wood or steel used on some types of cranes or derricks to support the hoisting lines that carry the load.

21. "Bowline" - A knot much used in lifting heavy equipment with the catline. Its advantage lies in the fact that it can be readily untied irrespective of the load that has been placed on it.

22. "Breaking down" - Usually means unscrewing the drill stem into single joints and placing them on the pipe rack. This operation takes place at the completion of the well when the drill pipe will no longer be used. It also takes place when changing from one size drill pipe to another during drilling operations. It is necessary to "break the pipe down" in order that it will be in lengths short enough to be handled and moved. Also called Laying Down.

23. "Breakout Line" - Either a wire rope or a manila or fiber rope used in conjunction with a pipe tong and a cathead which serves to impart a pulling power on the tong handle to start the unscrewing or breaking of a threaded pipe joint or tool joint when the pipe is in a vertical position in the well and projecting above the rotary table.

24. "Breakout" - Refers to the act of unscrewing one section of pipe from another section, especially in the case of drill pipe while it is being withdrawn from the wellbore. During this operation the Breakout Tongs are used to start the unscrewing operation.

25. "Casing" - Steel pipe placed in an oil or gas well as drilling progresses. The function of casing is to prevent the wall of the hole from caving during drilling and to provide a means of extracting the oil if the well is productive.

26. "Cat" - A crawler type tractor noted for its ability to move over difficult terrain. It is much used in clearing the location, earth-moving operations, and skidding rigs. The operator or driver is frequently referred to as a CAT DRIVER. This term is probably a shortening of the trade name Caterpillar, which is a brand of this type of equipment.

27. "Cathead" - Is a spool shaped steel mechanical device mounted on the end of a shaft of a drawworks, well pulling hoist or other machinery onto which a fiber rope such as a catline, breakout line, make-up line, spinning line, is wrapped to impart a pulling power to such rope or line.

28. "Cathead--automatic" - A steel mechanical device, generally in such shapes as a sheave, hoist, drum, pulley or wheel, and is mounted on the shafting of a drawworks, well pulling hoist or other machinery to which is attached a breakout

line, make-up line, or a spinning line. The primary purpose of the automatic cathead is to impart a pulling power on the breakout line, make-up line, and/or spinning line. (See definitions for Breakout Line, Make-up Line and Spinning Line.)

29. "Catline" - a rope, usually a manila rope which is usually reeved over a single sheave in the mast or on a sheave suspended from the derrick gin pole. It serves a general utility purpose for making pulls, lifting or lowering objects up into or from the derrick, lifting and transferring materials about the derrick floor. One end of the line is attached to the object, other end is wrapped around the cathead to effect the source of power.

30. "Cellar" - Excavation under the derrick to provide space for items of equipment at the top of the wellbore. Also serves as a pit to collect drainage of water and other fluids under the floor for subsequent disposal by jetting.

31. "Cementing" - The operation by which cement slurry is forced down through the casing and out at the lower end in such a way that it fills the space between the casing and the sides of the wellbore to a predetermined height above the bottom of the well. This is for the purpose of securing the casing in place and excluding water and other fluids from the wellbore.

32. "Christmas Tree" - A term applied to the valves and fittings assembled at the top of a well to control the flow of the fluids.

33. "Circulating Fluid"--drilling Fluid, Mud - A fluid consisting of water, oil, or other liquid which may contain clay, weighting materials and/or chemicals which is circulated through the drill pipe and well bore during rotary drilling and workover operations.

34. "Closed-container" - A container so sealed by means of a lid or other device that neither liquid nor vapor will escape from it at ordinary temperatures.

35. "Collar" - Usually refers to a coupling device used to join two lengths of pipe.

36. "Combustion" - Any chemical process that invloves oxidation sufficient to produce light or heat.

37. "Combustible Liquids" - Any liquid having a flash point at or above 100 degrees F. (37.8 degrees C.)

38. "Competent Person" - One who is capable of identifying existing and predictable hazards in the surroundings of working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

39. "Corrosion" - The complex chemical or electrochemical process by which metal is destroyed through reaction with its environment. The familiar coating of rust that appears on steel is a product of corrosion.

40. "Corrosive" - An agent which, in contact with animal tissue, by chemical reaction will cause more or less severe destruction and with which systematic effects are either of secondary nature or less pronounced than with poisons.

41. "Counter Weight" - A ladder climbing assist device.

42. "Crown Block" - Two or more metal beams of plates and other metal parts assembled into a framework within which are mounted one or more sheaves. The crown block is mounted on top of the derrick. The hoisting line is reeved on the crown block sheaves.

43. "Dead Line" - This refers to the end of the drilling line which is not reeled on the hoisting drum of the rotary rig. This end of the drilling line is usually anchored to the derrick substructure and does not move as the traveling block is hoisted, hence the term "dead line."

44. "Dead Man" - A buried anchor to which guy-wires are tied to steady the derrick, boiler stacks, etc.

45. "Density" - The weight of a substance per unit volume. For instance, the density of drilling mud may be described as "10.0 lbs. per gallon" or "74.9 lbs. per cubic foot."

46. "Derrick" - Any one of a large number of types of load-bearing structures. In drilling work, the standard derrick has four legs standing at the corners of the substructure and reaching to the crown blocks. The substructure is an assembly of heavy beams used to elevate the derrick above the ground and provide space to install blowout preventers, casing heads, etc. The standard derrick has largely been replaced by the mast for drilling. The mast is lowered and raised without disassembly. For land transport it may be divided into two or more sections to avoid excessive length on the highway.

47. "Derrick Foundation" - Is either concrete, wood, or other solid and substantial material placed on the ground upon which the derrick is built and/or supported, and includes all the substructure which supports the derrick legs and derrick floor.

48. "Derrick Gin Pole" - An assembly of two or more vertical or upright members supporting one or more cross members, erected on the top of a derrick above the opening in the top thereof. It serves as a support for a block and tackle, primarily for raising or lowering the crown block to or from the top of the derrick.

49. "Derrick Ladder" - A fixed ladder attached to a derrick as a means of access to the top and/or any inside platform on the derrick.

50. "Derrick Walk" (Cat Walk) - This is a walkway extending from the V Door Ramp beyond the outer end of the drill pipe and casing storage rack at a well, the purpose of which is to facilitate the handling of the pipe between the rack and the derrick.

51. "Derrickman" - The crew member whose work station is in the derrick while the drill stem is being hoisted from or being lowered into the hold. He attaches the elevators to the drill stem members as they are being lowered into hold and detaches the elevators and racks the drill stem in the finger board after it is unscrewed and set on the floor. Other responsibilities frequently include the conditioning of the drilling fluid and maintenance of the mud and slush pumps.

52. "Diesel Electric Power" - The power supplied to a drilling rig by diesel engines driving electric generators. This type of power is widely used on drilling barges and offshore platforms.

53. "Drawworks" - Includes an assembly of shafts, sprockets, chains, pulleys, belts, clutches, catheads, and/or other mechanical devices, suitably mounted and provided with controls, for hoisting, operating, and handling the equipment used for drilling a well or servicing a producing well. Drawworks may be either stationary or portable.

54. "Elevator" - A steel mechanical device used in connection with the hoisting equipment, suspended from the traveling block or traveling block hook, for holding in suspension pipe or sucker rods being lowered into or pulled from a well. There being so many types of elevators only the most common type is herein described as follows: one side of the elevator body is a gate or door which, when closed, forms a conjunction with the remaining part of the elevator body a circular opening that fits snugly around the pipe or rod just below the threaded joint, sleeve, or coupling thereof. The threaded joint, sleeve, or coupling being larger than the circular opening in the elevator body, the pipe or rods are held in suspension from the elevator.

55. "Fast Line" - The end of the drilling line which is affixed to the drum or reel. It is so called because it apparently travels with greater velocity than any other portion of the drilling line.

56. "Feed-off" - The act of unwinding a cable from a drum. Also a device on a drilling rig that keeps the weight on the bit constant, and lowers the drilling line automatically. Known as the "automatic driller."

57. "Finger Board" - A rack with fingers located in the derrick to contain the top of the stands of pipe while they are

racked in the derrick.

58. "Finger Brace" - Any structural member either in direct or indirect contact with the finger to resist either horizontal, vertical, or diagonal movement of the finger.

59. "Fireman" - The member of the crew on a steam-powered rig who is responsible for the care and operation of the boilers. On a mechanical rig his counterpart is the motorman.

60. "Fish" - An object accidentally lost in the hole.

61. "Fishing" - Operations on the rig for the purpose of retrieving from the wellbore sections of pipe, casing or other items which may have become stuck or inadvertently dropped in the hole.

62. "Flammable" -Capable of being easily ignited,burning intensely, or having a rapid rate of flame spread.

63. "Flammable Liquid" - Any liquid having a flash point below 100 degrees F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F.

64. "Flare" - An open flame used to dispose of unwanted gas.

65. "Flash Point" (of the liquid) - The temperature at which it gives off vapor sufficient to form an ignitable mixture with the air near the surface of the liquid or within the vessel used as determined by appropriate test procedure and apparatus as specified below.

a. The flash point of liquids having a viscosity less than 45 Saybolt Universal Second(s) at 100 degrees F. (37.8) degrees C.) and a flash point below 175 degrees F. (79..4 degrees C.) shall be determined in accordance with the standard Method of test for Flash Point by the Tag Closed Tester, American Standard Testing Method ASTM D-56-69.

b. The flash point of liquids having a viscosity of 45 Saybolt Universal Second(s) or more at 175 degrees C.) or higher shall be determined in accordance with the Standard Method of Test for Flash Point by the Pensky Martens Closed Tester,(ASTM) D-93-69.

66. "Floor Hole" - An opening measuring less than 12 inches but more than 1 inch in its least dimension in any floor, roof, or platform through which materials but not persons may fall, such as a belt hold, pipe opening, or slot opening.

67. "Floor Opening" - An opening measuring 12 inches or more in its least dimension in any floor, roof, or platform through which persons may fall.

68. "Floorman" - A member of the drilling crew whose work station is usually on the derrick floor.

69. "Fracturing"(Formation) -A method of stimulating production by increasing the permeability of the producing formation. Under extremely high hydraulic pressure, a fluid such as distillate, diesel fuel, crude oil, dilute hydrochloric acid, water, or kerosene is piped downward through production tubing or drill pipe and forced out below a packer between two packers. The pressure causes cracks to open in the formation, and the fluid penetrates the formation through the cracks. Sand grains, aluminum pellets, walnut shells, or similar materials are carried in suspension by the fluid into the cracks. These are called propping agents. When the pressure is released at the surface, the fracturing fluid returns to the well. The cracks partially close on the pellets, leaving channels for oil to flow around them to the well. Sometimes shortened to "Frac."

70. "Gas Cut Mud" - Mud with entrained formation gas which gives the mud a characteristic fluffy texture.

71. "Gas" or "Gases" - The vapor state of the hydrocarbons occurring in, or derived from, petroleum or natural gas.

72. "Gel" -A gelatinous substance formed by certain colloidal dispersions at rest. Gel Strength is a measure of the ability of a colloidal dispersion to form such a gel, and is based upon its resistance to shear. The gel strength of a drilling mud determines its ability to hold solids in suspension, and for this reason bentonite and other colloidal clays are added to drilling fluids. It is important that the gel formed by the mud, when drilling is not in progress, be thixotropic--that is, it should be readily converted to a fluid state by agitation and then gel again when at rest in order to prevent the cuttings from settling to the bottom of the hole.

73. "Geronimo Escape Line" - A wire line attached near the board which has a man-riding trolley to convey personnel to the ground by use of a friction control speed device.

74. "Handrail" - A bar or pipe supported on brackets from a wall or partition, as on a stairway or ramp, to furnish persons with a handhold in case of tripping.

75. "Hazardous Substance" - A substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, causing irritation, or otherwise harmful, is likely to cause death or injury.

76. "Kelly" - The heavy square or hexagonal steel pipe which goes through the rotary table and in conjunction with the drive bushing turns the drill string.

77. "Kelly Cock" - A valve installed between the swivel and the kelly. When a high pressure backflow begins, the operator can close this valve and keep the pressure off the swivel and rotary hose.

78. "Liquefied Petroleum Gases" - "LPG: and LP-Gas" mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of them, such as propane, propylene, butane, (normal butane or iso-butane), and butylenes.

79. "Log" - A running account listing a series of events in chronological order. The driller's log is a tour-to-tour account of progress made in drilling. An electric well log is the record of geological formations which is made by a well logging device. This device operates on the principle of differential resistance of various formations to the transmission of electric current.

80. "Logging" - A generic term used when instruments are run in the hole for any of several purposes during drilling or completion operations.

81. "Lubricator" - An extension of casing or tubing above a valve on top of the casing or tubing head. Lubricators are supplied with a pack-off, or pressure sealing, device at the upper end to afford a seal on the wireline, or other connection, attached to tools run into a well.

82. "Making a Trip" - Consists of hoisting the drill pipe to the surface and returning it to the bottom of the wellbore. This is done for the purpose of changing bits, preparing to take a core, and for other reasons.

83. "Motorman" - The man on a mechanical rotary drilling rig responsible for the care and operation of the drilling engines.

84. "Mouse Hole" - A shallow cased hole close to the rotary table through the derrick floor in which a joint of drill string can be placed to facilitate connecting the joint to the kelly.

85. "Mud" - The liquid that is circulated through the wellbore during rotary drilling and workover operations. In addition to its function of bringing cutting to the surface, drilling mud also cools and lubricates the bit and drill string, protects against blowouts by containing subsurface pressures, and deposits a mud cake on the wall of the borehole to prevent loss of fluids to the formations. Although it originally was a suspension of earth solids, especially clays, in water, the mud used in modern drilling operations is a somewhat more complex three-phase mixture of liquids, reactive solids, and inert solids. The liquid phase may be fresh water, diesel oil, or crude oil, and may contain one or more conditioners.

86. "Mud Balance" - An instrument consisting of a cup and graduated arm with a sliding weight and resting on a fulcrum, used to measure weight of the mud.

87. "Mud Gun" - A pipe that shoots a jet of drilling mud under high pressure into the mud pit to mix the additives and stir the mud for other reasons.

88. "Mud Log" - To record information derived from examination and analysis of return circulation mud and drillbit cuttings.

89. "Mud off" - In drilling, to seal the hole off from the formation water or oil by using mud. Applies especially to the undesirable blocking off of the flow of oil from the formation into the wellbore. Special care is given to the treatment of drilling fluid to avoid this.

90. "Mud Pit" - The reservoir or tank through which the drilling mud is cycled to allow sand and fine sediments to settle out, where additives are mixed with mud,and where the fluid is temporarily stored before being pumped back into the well. Mud pits may be further classified as the shaker pit, settling pit, and suction pit, according to their main purpose.

91. "Mud (Slush) Pump" - A large single (triplex) or double (duplex) acting pump used to circulate mud down the drill pipe and up the annulus, under normal operations. It is a piston type pump whose pistons reciprocate in replaceable liners.

92. "Outside Derrick Platform" - A walkway extending across one or more outer sides of a derrick at an elevation of 10 feet or more above the derrick floor.

93. "Pipe Rack" - A series of parallel heavy wooden or steel bents, secured in place by bracing, on which pipe is stored. Flooring may be laid upon the bents.

94. "Platform" - A working space for persons, elevated above the surrounding floor or ground, such as a balcony or platform for the operation of machinery and equipment.

95. "Pressure Relief Device" - A device for relieving pressure, such as a direct spring-loaded safety valve, rupture disc, or piston shear pin valve.

96. "Prime Mover" - As applied to oil well drilling, this is the steam or diesel engine, electric motor, or other internal-combustion engine which is the source of power for the drilling rig.

97. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by knowledge, training and/or experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

98. "Ram" - On a blowout preventer, the closing and sealing component.

99. "Respiratory Equipment" - Is approved self-contained oxygen breathing apparatus, canister-type gas masks, air hose masks, and other approved equipment providing equivalent protection.

100. "Rig" - All mechanical equipment directly connected with the drilling of a well or for producing petroleum from a well.

101. "Rigging down" - The act of dismantling the drilling rig and auxiliary equipment following the completion of drilling operations. Also referred to as tearing down.

102. "Rigging up" - The act of assembling the drilling rig and auxiliary equipment prior to commencement of drilling operations.

103. "Rotary Drilling" - The drilling method by which a hole is drilled by a rotating bit to which a downward force (drill collars) is applied. The bit is fastened to and rotated by the drill stem, which also provides a passage for the circulating fluid.

104. "Rotary Hose" - The hose that conducts the circulating fluid from the standpipe to the swivel and kelly.

105. "Roustabout" - A laborer who assists the foreman in the general work about producing oil wells and around the property of the oil company. Also used on large offshore drilling rigs to help maintain the rig and load and unload material.

106. "Runway" - A passage for a person, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

107. "Safety Can" - Means an approved closed container, of not more than 5 gallons capacity, having a spring-closing lid and spout cover and so designed that it will safely relieve internal pressure when subjected to fire and exposure.

108. "Shale Shaker" - A vibrating screen that removes coarser cuttings from the circulating fluid before it flows into the return mud pit, disilters or desanders.

109. "Shall" - Means mandatory.

110. "Shutdown" - A term denoting that work has been temporarily stopped as on an oil well.

111. "Slurry" - Any mixture of solids and water or cement slurry which is pumped into the well to cement casing or plug back.

112. "Source of Ignition" - Any flame, arc, spark, or heat which is capable of igniting flammable liquids, sour gas, or oil, gases, or vapors.

113. "Spudding" - Refers to the act of hoisting the drill stem and permitting it to fall freely so that the drill bit strikes the bottom of the wellbore or bridge with considerable force. This is done to clean the bit of an accumulation of sticky shale which has slowed the rate of penetration and/or remove bridges or other obstructions. Careless execution of this operation can result in kinks in the drill string as well as damaged bit cones and bearings.

114. "Spudding in" - The very beginning of drilling operations of a well. The term has been handed down from cable tool operations in the early days of the oil industry.

115. "Stabbing Board" - A temporary platform in the derrick, 20 to 40 feet above the floor, on which a crewman works while casing is being run to guide a joint while it is being screwed into the joint in the rotary table.

116. "Stair Railing" - A vertical barrier erected along exposed sides of a stairway to prevent falls of persons.

117. "Stairs" or "Stairways" - A series of steps leading from one level or floor to another, or leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment that are used more or less continuously or routinely by employees or only occasionally by specific individuals. A series of steps and landings having three or more rises constitutes stairs or stairway.

118. "Standard Railing" - A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

119. "Standpipe" - Part of the circulating system. A pipe extending, usually along a derrick leg, to a height suitable for attaching the rotary hose.

120. "Substructure" - The foundation on which, normally, the derrick and engines sit. Height varies depending upon the equipment required, such as the blowout preventers, for the particular operation.

121. "Swabbing" - Operation of a lifting device on a wireline to bring well fluids to the surface when the well does not flow naturally. This is a temporary operation to determine whether or not the well can be made to flow or require artificial lift or stimulation to bring oil to the surface.

122. "Thribble" - A stand of drill pipe made up of three joints, each about 30 feet in length.

123. "Toeboard" - A vertical barrier at floor level erected along exposed edges of a floor opening, wall opening, platform, runway, or ramp to prevent falls of materials.

124. "Toolpusher" - The rig owner's supervisor who is in charge of one or more rigs. Usually the drilling contractor's highest level of direct field supervision.

125. "Tour" - The word which designates the shift of a drilling crew or other oil field workers.

126. "Traveling Block" - Two or more steel plates and other metal parts assembled into a framework within which are mounted one or more sheaves on which the hoisting line is reeved in connection with the sheaves on the crown block.

127. "Traveling Block Hook" - A hook suspended from the traveling block to which the elevator links, swivel bail, or other equipment is attached.

128. "V-door Ramp" - A ramp on the side of the drilling rig where pipe is laid to be lifted to the derrick floor by the catline.

129. "V-door (Window)" - An opening in a side of a standard derrick at the floor level having the form of an inverted V. This opening is opposite the drawworks. It is used as an entry to bring in drill pipe and casing from the pipe rack.

130. "Vapor Proof" - A term used to describe a product which is not susceptible to the action of gases or other vapors.

131. "Viscosity" - A measure of liquid's resistance to flow. The viscosity of petroleum products or mud is usually expressed, and measured by the time it takes for a certain volume to flow through an orifice of specific size.

132. "Wall Opening" - An opening at least 30 inches wide, in any wall or partition, through which persons may fall, such as a yard-arm doorway or chute opening.

133. "Weight Indicator" - Instrument on a drilling or workover rig, which shows the weight suspended from hook.

134. "Weighting Material" - A material used to increase the density of drilling fluids or cement slurries.

135. "Wellbore" - The hole made by the drilling bit.

136. "Wildcat" - A well in unproved territory. With present day exploration methods and equipment about one wildcat of every 10 drilled proves to be commercially productive.

137. "Wildcatter" - One who drills wells in the hope of finding oil in territory not known to be an oil field.

138. "Wind Load Rating" - A specification of a derrick used to indicate the resistance of the derrick to the force of wind.

139. "Work-over" - To perform one or more of a variety of remedial operations on a producing oil well with the hope of restoring or increasing production. Examples of work-over operations are deepening, plugging back, pulling and resetting the line, squeeze cementing, shooting and acidizing.

140. "Well Servicing" or "Special Services" - Consists of, but not limited to the operations listed in the 1972 Standard Industrial Classifications Manual under "1382 Oil and Gas Field Services" and "1389 Oil and Gas Field Services, Not Elsewhere classified."

R614-2-3. Drilling Industry -- General Safety and Health Provisions.

A. General Requirements.

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, hot surfaces, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

B. First Aid Supplies and Training.

1. Every operation subject to the provision of these orders shall at all times have a supply of first aid equipment (24 unit min.) which shall be conveniently located so as to be readily accessible. The first aid supplies shall be encased in suitable sanitary storage places so as to protect them from contamination, and the contents of the kits replenished as used.

2. At least one employee at the work site shall be trained in first aid and rescue operations.

3. First aid equipment shall be provided. This equipment shall be stored in sanitary places which are conveniently and accessibly located. First aid equipment shall include: one set of arm and leg splints; two all-wool blankets or blankets equal in strength and fire resistance; and one stretcher. Where harmful chemicals are being used, readily accessible facilities shall be available for rapid flushing of the eyes and/or skin areas.

4. Provisions shall be made prior to commencement of the project for either prompt transportation of an injured person to a physician or hospital, or an effective communication system for contacting necessary ambulance service.

5. The telephone numbers of the physician, hospitals, or ambulances shall be conspicuously posted.

C. Housekeeping.

Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

D. Pressure Vessels and Boilers.

1. Pressure Vessels: Shall be built in accordance with the requirements for Unfired Pressure Vessels of the ASME Boiler and Pressure Vessel Code, pursuant to Section 34A-7-102.

2. Boilers: Boilers provided by the employer shall be deemed to be in compliance with the requirements of this rule when evidence of current and valid certification by an insurance company or regulatory authority attesting to the safe installation, inspection, and testing is presented.

E. Employee-Owned Equipment.

Where employees provide their own protective equipment, the employer shall be responsible to assure that it meets the appropriate American National Standard Institute or a national consensus standard.

F. Head Protection.

1. The employer shall require the use of Class A protective helmet (Safety Hard Hat) where there is a hazard from flying or falling objects.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

G. Eye and Face Protection.

Employees shall be provided with eye and face protective equipment when machines or operations present potential eye or face injury from physical, chemical, or radiation agents.

H. Respiratory Protection.

1. When necessary appropriate respiratory protective devices shall be provided by the employer and shall be used.

2. The employer shall provide and shall require employees to use self contained breathing apparatus or supplied air respirators in atmospheres which have an oxygen concentration of less than 19.5%. All units shall be of a pressure demand type or a positive pressure type.

3. All respiratory devices regardless of type shall be selected, used, and maintained in accordance with 29 CFR 1910.134 "Respiratory Protection" of the Utah Occupational Safety and Health Rules and Regulations.

a. The air from a regular compressed air line may be used for breathing air systems if:

b. A trap and carbon filter are installed and regularly maintained to remove oil, water, scale, and odor;

c. A pressure reducing diaphragm or valve is installed to reduce pressure down to requirements of the particular type of respirator; and

d. An automatic control is provided to either sound an alarm or shut down the compressor in case of over heating.

I. Occupational Noise Exposure.

1. Protection against the effects of noise exposure shall be provided when the sound levels exceed those shown in the following permissible noise exposure table when measured on the "A" scale of a standard sound level meter at slow response. When noise levels are determined by octave band analysis, the equivalent A-weighted sound level may be determined by referring to 29 CFR 1910.95(a), Figure G-9.

2. When employees are subjected to sound exceeding those listed in the following table, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the levels of the table, personal protective equipment shall be provided and used to reduce sound levels within the levels of the table.

TABLE 1

PERMISSIBLE NOISE EXPOSURES

Duration per day, hours	Sound level dBA slow response
8	90
6	92
4	95
3	97
2	100
1-1/2	102
1	105
1/2	110
1/4 or less	115

When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect should be considered, rather than the individual effect of each. If the sum of the following fractions: $C_1/T_1 + C_2/T_2 \ldots C_n/T_n$ exceeds unity, then the mixed exposure should be considered to exceed the limit value. C_n indicates the total time of exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level.

3. Exposure to impulsive or impact noise shall not exceed 140 dB peak sound pressure level.

4.Variations in sound levels

a. If the variations in noise levels involve maxima at intervals of 1 second or less, it is to be considered continuous.

b. In all cases where the sound levels exceed the values shown herein, a continuing, effective hearing conservation program shall be administered.

5. Audiometric Tests.

a. Audiometric testing may be requested by the UOSH Administrator whenever individual hearing loss is in question. These tests shall be arranged for by the employer and shall be given under medical supervision.

b. To ensure accurate audiograms, the facilities must meet the following minimum standards:

c. Test Room. Audiograms shall be obtained only in environments which meet the requirements of the American National Standards Institute for background noise.

d. Audiometer. Audiometers shall meet the specifications of the American National Standards Institute and should be maintained in calibration in accordance with recognized procedures.

J. Working Over or Near Water.

Employees working over or near water, where the danger of drowning exists, shall be provided with U.S. Coast Guard-approved life jackets or buoyant work vests.

K. Occupational Foot Protection.

The employer shall require employees to wear safety shoes or boots in the working areas.

L. Safety Harnesses, Lifelines, and Lanyards.

1. The employer shall require and provide an approved safety harness suitable for the particular job or hazard exposure, which shall be attached by means of a tailrope or lanyard to a fixed anchor and adjusted to allow a maximum drop of 6 feet in case of fall, except when working on the fingerboard or when longer tag lines are necessary to perform the work required.

2. A separate life line shall be provided for each employee exposed to the particular job or hazard.

3. Safety harnesses and life lines shall be checked prior to each use and shall be repaired or replaced if found to be defective.

M. Emergency Escapes.

1. A Safety Buggy with an adequate braking device shall be installed on an escape line and kept at the derrickman's working platform.

2. The Safety Buggy and escape line shall be checked by the derrickman prior to each trip.

3. An escape line shall be a wire rope of suitable diameter and type. It shall be kept free of obstruction.

4. Tension on the escape line shall be such that a 180 lb. worker sitting in the Safety Buggy will touch the ground at least 20 feet from the anchor.

5. The length of the escape line shall be adequate to assure no less than a 45 degree descent from the vertical plane and shall be securely anchored both at the ground and to the rig.

N. Gases, Vapors, Fumes, Dusts, and Mists.

1. Occupational asbestos exposure shall be controlled in accordance with 29 CFR 1910.1001 of the Utah Occupational Safety and Health Rules and Regulations.

2. Exposure to contaminants shall be limited by the regulations set forth in Chapter Z of the Utah Occupational Safety and Health Rules and Regulations.

O. Ionizing Radiation.

Sources of ionizing radiation not regulated by the Nuclear Regulatory Commission shall be regulated by 29 CFR 1910.96 of the Utah Occupational Safety and Health Rules and Regulations.

P. Non-Ionizing Radiation.

Non-ionizing radiation exposure shall be regulated by 29 CFR 1926.54; and 29 CFR 1910.97.

Q. Hydrogen Sulfide (H_2S) Gas.

1. Area Definitions

a. No Hazard Area = any well which will not penetrate a known H_2S horizon.

b. Low Hazard Area = any well which will penetrate a formation containing H_2S with a known .35 psi/ft. B.H. pressure gradient or less and/or in which the H_2S zone has been effectively sealed off by casing-cementing and/or cementing method.

c. Medium Hazard Area = any well which will penetrate a formation containing H_2S not defined in R614-2-3.Q.1.a. and b.

d. High Hazard Area = any operation expected to bring free H_2S gas to the surface, i.e., DST (Drill Stem Testing), production testing, etc.

2. H_2S Safety Equipment Procedures.

a. The well operator and employer will require that the following safety equipment shall be provided and operational on site before the hole is 500 feet above any formation as defined in R614-2-3.Q.1. suspected and/or known to contain H_2S Gas.

(1) No Hazard Area

(a) No special H_2S equipment shall be required.

(2) Low Hazard area:

(a) Two (2) thirty (30) minute self-contained breathing apparatuses for emergency use only.

(3) Medium Hazard Area:

(a) Air masks with emergency escape cylinders for each employee.

(b) Two (2) thirty (30) minute self-contained breathing apparatuses for emergencies.

(c) Three wind socks and/or streamers.

(d) Oxygen powered resuscitator with cylinder.

(e) 2-Gas detectors (pump type).

(f) A separate warning system.

(4) High Hazard Area:

(a) Manifold air masks with emergency escape cylinders for each employee.

(b) Two (2) thirty (30) minute self-contained breathing apparatuses for emergencies.

(c) Three wind socks and/or streamers.
(d) Oxygen powered resuscitator with cylinder.
(e) Two Gas detectors (pump type).
(f) A separate warning system.

3. The employer shall assure that in High Hazard Areas no employee is permitted on location without H_2S safety training, except for instruction purposes.

4. The well operator shall provide two (2) means of egress on each location in a High Hazard Area.

5. A means of communications or instructions for emergency procedures shall be established and maintained on location along with the names and telephone numbers of the person or persons to be informed in case of emergencies.

6. Employee Instructions.

a. Employees shall be instructed in the use of all H_2S safety equipment before being allowed on the location.

b. The instruction of personnel shall include the following elements.

c. Employees shall be informed of the characteristics of H_2S and its hazards.

d. Proper first-aid procedures to be used in a H_2S knock down.

e. Use of personal protective equipment.

f. Use and operation of H_2S monitoring systems.

g. Corrective action and shut-down procedures.

7. The employer shall be able to show through training and/or experience that the person(s) giving H_2S safety instruction is qualified to give such instructions.

8. Signs shall be posted 500 feet from the location, when possible, on each road leading to the location warning of the hazard of H_2S.

9. All H_2S Safety equipment shall be checked to assure readiness before each tour change.

R. Illumination.

1. Lighting in the work place shall be sufficient to enable the employees to see clearly enough to perform their work safely.

2. Vehicle lights shall not be used for lighting of rig operations in lieu of rig lights, except in emergency.

S. Sanitation.

1. Potable Water.

a. An adequate supply of potable water shall be provided in all places of employment.

b. Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

c. Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

d. The common drinking cup is prohibited.

2. Toilet Facilities.

a. Under temporary field conditions at any work site, provisions shall be made to assure that not less than one toilet facility is available.

b. Toilets shall be maintained in a clean and sanitary condition.

3. Temporary Sleeping Quarters. When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

4. Washing Facilities. The employer shall provide adequate washing facilities for employees engaged in operations where contaminants may be harmful to the employees.

R614-2-4. Drilling Industry -- Fire Protection and Prevention.

A. Fire Protection.

1. The employer shall be responsible for the development of a fire protection program to be followed throughout all phases of operation work, and he shall provide for the firefighting equipment. As fire hazards occur, there shall be no delay in providing the necessary equipment.

2. Access to all available firefighting equipment shall be maintained at all times.

3. A minimum of four (4) 20#, Class B-C fire extinguishers or equivalent shall be conveniently located at the rig.

4. A minimum of two (2) 20#, Class B-C fire extinguishers or equivalent shall be conveniently located on well service units.

B. Fire Prevention.

1. All sources of ignition shall be prohibited at or in the vicinity of all operations that constitute a fire hazard, unless adequate protection is provided.

2. Smoking shall be prohibited at or in the vicinity of operations which constitute a fire hazard, and shall be conspicuously posted: "No Smoking".

3. An exhaust pipe from any internal combustion engine, located within 75 feet of any well bore, process vessel, oil storage tank, or other source of ignitable vapor, shall be so constructed and used so that any emission of flame along its length or at its end is prevented.

4. Burning stoves and open fires shall not be permitted within 75 feet of the wellbore, except for purpose of maintenance and repair.

5. Engine-driven light plants shall be located at least 75 feet from the wellbore unless properly protected to prevent source of ignition.

6. Oil and Grease Hazards. Oxygen cylinders and fittings shall be kept away from oil or grease.

7. When lighting a flare pit, the lighting shall be done from the upwind side. When there is no wind or when the wind direction is uncertain, no attempt shall be made to light the pit unless the operator can position himself in an explosive-free area. The use of hand thrown rags or similar flaming objects shall be prohibited.

a. A pilot flame shall be maintained at the end of the discharge line at all times when air, gas, or mist drilling is in progress.

C. Flammable Liquids.

1. General Requirements.

a. Only approved containers and portable tanks shall be used for storage and handling of flammable liquids. Approved safety cans shall be used for the handling and use of flammable liquids in quantities less than 5 gallons. For quantities of one gallon or less, only the original container or approved safety cans shall be used for storage, use, and handling of flammable liquids.

b. No material used for cleaning shall have a flashpoint less than 100 degrees F. Examples of materials which may have flashpoints below 100 degrees F. are Gasoline, Naphtha, etc.

c. No smoking or open flame shall be allowed within 25 feet of the handling of flammable liquids. Any engine being refueled shall be shut off during such refueling except diesel engines.

d. An electrical bond shall be maintained between containers when a flammable liquid is being transferred from one to the other.

e. Dispensing nozzles and valves shall be of the self-closing type.

f. Except for the fuel in the tanks of the operating equipment, no flammable fuel shall be stored within 75 feet of a wellbore.

g. Drainage from any fuel storage shall be in a direction away from the well and equipment.

2. Safety Procedures for Fuel Tanks

a. Propane or butane tanks shall be placed parallel to any side of the rig.

b. Fuel tanks shall be protected by crash rails or guards to prevent physical damage unless by virtue of their location they

have this protection.

c. Fuel tank storage areas shall be kept free of weeds, debris, and other combustible material not necessary to the storage.

3. Liquid Petroleum Gas (LPG)

a. Liquid Petroleum Gas (LPG) shall be handled in accordance with NFPA 58-69 "Standard for Handling of Liquefied Petroleum Gases," or according to the latest published addenda or revision of that code.

b. Utilization equipment shall have a thermal coupling or equivalent installed.

R614-2-5. Drilling Industry -- Signs, Signals and Barricades.

A. Prevention Signs and Tags.

1. General. Warning signs or symbols shall be visible at all times when work is being performed, and shall be removed or covered promptly when the hazards no longer exist.

a. Regulatory signs and barricades for Hydrogen Sulfide are covered in R614-2-3.Q.8.

2. Safety Warning Signs

a. Warning signs shall be posted to denote any unusual hazardous situation.

b. Warning signs shall be posted in areas where the use of personal protective equipment is required.

c. Identification signs shall be conspicuously posted to locate emergency equipment.

d. Storage areas and containers of poisonous, toxic, flammable, or explosive material shall be properly labeled and appropriately stored according to content.

3. Transformers.

Signs indicating danger and prohibiting unauthorized access shall be conspicuously displayed on the housing or other enclosure around electrical equipment.

B. Signaling.

Signals between supervisors, employees, or other persons involved shall be established and agreed upon prior to start of operations.

R614-2-6. Drilling Industry -- Materials Handling, Storage and Use.

A. General Requirements for Storage.

1. All materials stored in tiers shall be stacked, racked, blocked, interlocked, or otherwise secured to prevent sliding, falling, or collapse.

2. Aisles and passageways shall be kept clear to provide for the free and safe movement of material handling equipment or employees. Such areas shall be kept in good repair.

3. Noncompatible materials shall be segregated in storage.

4. Bagged materials shall be stacked by stepping back the layers and cross-keying the bags at least every 10 bags high.

B. Construction and Loading of Pipe Racks.

1. Construction of pipe racks shall be designed to support any load placed thereon.

2. Pipe racks shall be set level laterally on a stable foundation. They may slope front to back to facilitate laying down or picking up pipe.

3. Provision shall be made to prevent pipe, tubular material, or other round material from rolling off pipe racks.

4. No employee shall go between pipe racks and a load of pipe during loading, unloading, and transferring operations.

5. Pipe shall be loaded and unloaded, layer by layer, with bottom layer pinned or blocked securely on all 4 corners, and each successive layer effectively chocked or blocked.

6. Spacers shall be used, and evenly spaced between the layers of pipe or material on the rack.

7. When pipe is being moved or transferred between pipe racks, truck and trailer, the temporary supports for skidding or rolling shall be so constructed, placed, and anchored so as to support the load that is placed on them.

8. During freezing weather, pipe standing on end shall be positioned so as to afford proper drainage.

C. Rigging Equipment for Material Handling.

1. General.

a. Rigging equipment for material handling shall be checked prior to use on each shift and as necessary during its use to ensure that it is safe. Defective rigging equipment shall be removed from service.

b. Rigging equipment shall not be loaded in excess of its recommended safe working load.

2. Wire Ropes.

a. Protruding ends of strands in splices on slings and bridles shall be covered or blunted.

b. An eye splice made in any wire rope shall have not less than three full tucks. However, this requirement shall not operate to preclude the use of another form of splice or connection which can be shown to be as efficient and which is not otherwise prohibited.

c. Except for eye splices in the ends of wires and for endless rope slings, each wire rope used in hoisting or lowering, or in pulling loads shall consist of one continuous piece without knot or splice. Sand lines and winch lines are excluded.

d. Eyes in wire rope bridles, slings, or bull wires shall not be formed by knots.

e. When U-bolt wire rope clips are used to form eyes, The following table shall be used to determine the number and spacing of clips.

f. When used for eye splices, the U-bolt shall be applied so that the "U" section is in contact with the dead end of the rope.

3. Natural Rope and Synthetic Fiber.

Fiber ropes which are cut, frayed (through one or more strands), or that have been in contact with caustic, acid, or any other chemical that might weaken them shall be replaced immediately.

TABLE 2

NUMBER AND SPACING OF U-BOLT WIRE ROPE CLIPS

Improved plow steel rope diameter inches	NUMBER OF CLIPS Drop forged	Other material	Minimum Spacing inches
1/2	3	4	3
5/8	3	4	3-3/4
3/4	4	5	4-1/2
7/8	4	5	5-1/4
1	5	6	6
1-1/8	6	6	6-3/4
1-1/4	6	7	7-1/2
1-3/8	7	7	8-1/4
1-1/2	7	7	9

D. Transporting, Moving, and Storing Compressed Gas Cylinders.

1. Valve protection caps shall be in place and secured.

2. When cylinders are hoisted, they shall be secured on a cradle, slingboard, or pallet. They shall not be hoisted or transported by means of magnets or choker slings.

3. When cylinders are transported by powered vehicles, they shall be secured in a vertical position.

4. Valve protection caps shall not be used for lifting cylinders from one vertical position to another. Bars shall not be used under valves or valve protection caps to pry cylinders loose when frozen. Warm, not boiling water shall be used to thaw cylinders loose.

5. Cylinders shall be secured in an upright position and shall be separated in storage as to full and empty cylinders and shall be separated as to contents.

6. No person other than the gas supplier shall attempt to mix gases in a cylinder. No one except the owner of the cylinder or person authorized by him, shall refill a cylinder. No

one shall use a cylinder's contents for purposes other than those intended by the supplier.

7. No damaged or defective cylinder shall be used.

R614-2-7. Drilling Industry -- Tools - Hand and Power.

A. General Requirements.

1. Condition of tools. All hand and power tools and similar equipment, whether furnished by the employer or the employees, shall be maintained in a safe condition.

2. All hand-held powered tools shall be equipped with a constant pressure switch that will shut off the power when the pressure is released.

B. Hand Tools.

1. Employers shall not issue or permit the use of unsafe hand tools.

2. Impact tools, such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

3. The wooden handles of tools shall be kept free of splinters or cracks and shall be kept tight in the tool.

C. Power-Operated Hand Tools.

1. Electric power operated tools.

a. Electric power operated tools shall either be of the approved double-insulated type or grounded.

b. The use of electric cords for hoisting or lowering tools shall not be permitted.

2. Pneumatic Power Tools.

a. Pneumatic power tools shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected.

b. Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools to prevent attachments from being accidentally expelled.

c. The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

d. The use of hoses for hoisting or lowering tools is prohibited.

e. All hoses exceeding 1/2 inch inside diameter and having a pressure greater than 150 psi shall have a safety device at the source of supply or branch line to reduce pressure in case of hose failure.

3. Fuel Powered Tools.

a. All fuel powered tools shall be stopped while being refueled, serviced, or maintained.

b. When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment, as outlined in 29 CFR 1926.55 and 1926.103 shall apply.

4. Hydraulic Power Tools.

a. The fluid used in hydraulic powered tools shall be fire-resistant fluids approved under 30 CFR 1 to 199, and shall retain its operating characteristics at the most extreme temperatures to which it will be exposed.

b. The manufacturer's safe operating pressures for hose, valves, pipes, filters, and other fittings shall not be exceeded.

D. Abrasive Wheel Machinery.

1. Abrasive wheels shall be used only on machines provided with safety guards. Safety guards will be: spindle-end guards, tongue, and workrest guards.

2. Safety guards used on machines known as right angle head or vertical portable grinders shall have a maximum exposure angle of 180 degrees and the guard shall be so located so as to be between the operator and the wheel during use.

3. The maximum angular exposure of the grinding wheel periphery and sides for safety guards used on other portable grinding machines shall not exceed 180 degrees and the top half of the wheel shall be enclosed at all times.

E. Jacks-Lever and Ratchet, Screw, and Hydraulic, Except Rig Jacks.

1. The manufacturer's rated capacity shall be legibly marked on all jacks and shall not be exceeded.

2. All jacks shall have a positive stop to prevent overtravel.

3. Heavy capacity hydraulic jacks shall have a safety device which will cause the jacks to support the load in any position in event the jack malfunctions.

R614-2-8. Drilling Industry -- Welding and Cutting.

A. Welders and cutters shall be well trained in the safe practices that apply to their work.

B. Welding, cutting, and brazing shall not be done in the presence of explosive gas or fumes, or near combustible materials, except when performed in compliance with 29 CFR 1910 Subpart Q.

R614-2-9. Drilling Industry -- Electrical.

A. General Requirements.

1. Reference materials for electrical classifications are available at the UOSH office.

2. All electrical work, installation, and wire capacities shall be in accordance with the pertinent provisions of the National Electrical Code, 1990 Edition unless otherwise provided by regulations of this part.

B. Classification of Areas.

1. Drilling Wells. Areas surrounding wells in the process of drilling or being serviced by drilling rigs shall be classified as follows:

a. Well Head Area.

(1) When the derrick is not enclosed or is equipped with a wind-break (open top and V door) and the substructure is open to ventilation, the areas shall be classified as shown in Fig. I-1.

(2) When the derrick floor and substructure are enclosed, the areas shall be classified as shown in Fig. I-2.

b. Mud Tank.

(1) The area around a mud tank located outdoors with unrestricted ventilation shall be classified to the extent shown in Figure I-3.

(2) The area around a mud tank located in an enclosure shall be classed Class I, Div. II to the extent of the enclosure as shown in Fig. I-4.

c. Mud Ditch.

When an open ditch or trench is used to connect between mud tanks, or between shale shaker and mud tanks; or open, active mud pits located outdoors with unrestricted ventilation, the area shall be classified as shown for mud tanks in Fig. I-3.

d. Mud Pump

The area surrounding a mud pump shall be unclassified unless it is located in an area that is classified because of some other facility.

e. Shale Shaker.

(1) The area surrounding a shale shaker with unrestricted ventilation shall be classified as shown in Fig. I-5.

(2) When the shale shaker is located in an enclosure, the area shall be classified as Class I, Division II to the extent of the enclosure.

f. Desander - desilter

(1) A desander - desilter located in an open area or in an adequately ventilated enclosure shall be classified as shown in Fig. I-6.

(2) A desander - desilter located in an inadequately ventilated enclosure shall be classified as Class I, Division II to the extent of the enclosure.

g. Degasser.

The area surrounding a degasser which is a closed system, is unclassified except for the vent from the degasser, which shall be classified as shown in Fig. I-7.

h. Open Sump

The area surrounding an open sump which contains

volatile, flammable liquid shall be classified the same as for a mud tank as shown in Fig. I-3.

i. Diverter line vent.

The area around the diverter line shall be classified as shown in Fig. I-7 for gas vent.

2. Producing Oil and Gas Wells.

Areas adjacent to producing oil and gas wells shall be classified as follows:

a. Flowing well.

(1) Area around a flowing well located in an open area is unclassified where a cellar or below grade sump is not present.

(2) Area around a flowing well located in an open area with a cellar or below grade sump shall be Class I Division I below grade and Class I Division II above grade to the extent shown in Fig. I-8.

b. Artificially lifted wells.

(1) Beam pumping well.

(a) Where a cellar or below grade sump is not present, the area around a pumping well shall be Class I Division II to the extent shown in Fig. I-9.

(b) Area around a beam pumping well where a cellar or below grade sump is present shall be classified Class I Division I below grade and Class I Division II above grade to the extent shown in Fig. I-10.

(2) Well equipped with submersible, electric motor-driven pump.

(a) Area around a well in an open area being produced with a submersible electric motor-driven pump is unclassified if a cellar or below grade sump is not present.

(b) Where a cellar below grade sump is present at a well produced with a submersible, electric motor-driven pump, Class I Division I and Division II areas shall be classified as shown in Fig. I-8.

(3) Well produced with hydraulic subsurface pump.

(a) Area around a well being lifted with a hydraulic subsurface pump is not classified when there is no cellar or below grade sump.

(b) Where a cellar is present at a well being lifted with hydraulic subsurface pump, Class I Division I and Division II area shall be classified as shown in Fig. I-8.

(4) Gas liftwell.

(a) The area around a gas lift well located in an open area is unclassified when there is no cellar or below grade sump.

(b) Areas around a gas lift well that has a cellar or below grade sump shall be classified as Class I, Division I or Division II as shown in Fig. I-8.

C. Grounding and Bonding.

1. Portable and/or Cord and Plug-connected Equipment.

a. The noncurrent-carrying metal parts of portable and/or plug-connected equipment shall be grounded.

b. Portable tools and appliances protected by an approved system of double insulation, or its equivalent, need not be grounded. Where such an approved system is employed, the equipment shall be distinctively marked.

2. Fixed Equipment. Exposed noncurrent-carrying metal parts of fixed electrical equipment, including motors, generators, frames and tracks of electrically operated cranes, electrically driven machinery, etc., shall be grounded.

3. Effective Grounding. The path from circuits, electrical equipment, structures and conduit or enclosure to ground shall have a maximum resistance to ground of 25 ohms. Where the resistance exceeds 25 ohms, one or more driven rod electrodes shall be connected to the ground side of the system to lower the resistance to 25 ohms maximum.

4. Extension Cords/Cables. Extension cords/cables used with portable electric tools and appliances shall be of three wire type.

5. Bonding.

a. Conductors used for bonding and grounding stationary and moveable equipment shall be of ample size to carry the anticipated current.

b. When attaching bonding and grounding clamps or clips, secure and positive metal-to-metal contact shall be made.

6. Temporary Wiring. All temporary wiring shall be shall be grounded.

D. Overcurrent Protection.

1. Overcurrent protection shall be provided by fuses or circuit breakers for each feed and branch circuit, and shall be based on the current-carrying capacity of the conductors supplied and the power load being used.

2. No overcurrent device shall be placed in any permanently grounded conductor, except where the overcurrent device simultaneously opens all conductors of the circuit or for motor running protection.

3. When fuses are installed or removed with one or both terminals energized, special tools insulated for the voltage shall be used.

E. Switches, Circuit Breakers, and Disconnecting Means.

1. Each disconnecting means for motors and appliances, and each service feeder or branch circuit at the point where it originates, shall be legibly marked to indicate its purpose unless located and arranged so the purpose is evident.

2. Disconnecting means shall be located or shielded so that employees will not be injured.

F. Lockouts and/or Tagging.

Where there is danger of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs or maintenance work is being done, the employees shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, air driven machinery, pressurized lines or lines connected to such equipment if they would create a hazard to workers.

G. Electrical Equipment Installation and Maintenance.

1. General Requirements

a. Where different voltages, frequencies, or types of current (A.C. or D.C.) are to be supplied by portable cords, receptacles shall be of such design that attachment plugs used on such circuits are not interchangeable.

b. Attachment plugs or other connectors supplying equipment at more than 300 volts shall be of the skirted type or otherwise so designed that arcs will be confined.

c. Cable/cords passing through work areas shall be covered or elevated to protect it from damage which would create a hazard to employees.

d. Worn or frayed electric cables/cords shall not be used.

e. Extension cords/cables shall not be fastened with staples, hung from nails, or suspended by wire.

2. Facilities and Equipment.

a. Light plant generator shall have an adequate overload safety device.

b. All light cords and plug-ins shall be kept in good condition.

c. Rig lights shall be of an approved type for the area in which they are located.

d. Lamps and reflectors shall be cleaned frequently.

e. The rays of light shall be directed toward the objects to be illuminated, and away from the eyes of the worker.

3. Wiring and Electrical Equipment Permissible in Class I, Division II areas.

a. Wiring shall employ: Rigid threaded conduits, lead covered armoured cable, Type SO, SOW, STW, STO, GGW, W, Diesel Locomotive, or equivalent cable with approved connectors (vapor proof).

b. Electrical equipment including fixtures, plugs, receptacles, fittings and enclosures for switches and controllers

shall be sealed and gasketted or totally enclosed gasketted with threaded hubs (vapor proof).

c. Motors: All A.C. motors shall be totally enclosed, fan-cooled type (TEFC) or equivalent. D.C. motors located in Class I, Division II areas will be purged (cooled) with air from a safe source.

R614-2-10. Drilling Industry -- Ladders.

A. Ladders.

1. Except where either permanent or temporary stairways or suitable ramps or runways are provided, ladders described in this chapter shall be used to give safe access to all elevations.

2. All ladders shall be maintained in a safe condition. All ladders shall be checked regularly, with the intervals between checks being determined by use and exposure.

3. Ladder requirements not specifically referenced in this part shall be in accordance with the State of Utah Occupational Safety and Health Rules and Regulations 29 CFR 1910.25, 26, and 27.

4. Rungs, cleats, and steps shall be free of splinters, sharp edges, burrs, or projections which may be a hazard.

5. Where there is a walking/working platform or access to a ladder of 24 inches or more above the floor or ground level, a step or steps of not more than 12 inches high shall be provided for access.

6. Step-across distance. The step-across distance from the nearest edge of ladder to the nearest edge of equipment or structure shall not be more than 12 inches.

7. Cages or wells shall be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet where a climbing device is not used.

8. All landing platforms shall be equipped with standard railings and toeboards, so arranged as to give safe access to the ladder.

9. The side rails of a ladder shall extend 3 feet above parapets and landing.

10. Ladder safety devices may be used on ladders over 20 feet in unbroken length in lieu of cage protection. All ladder safety devices, such as those that incorporate lifebelts, friction brakes, and sliding attachments shall meet the design requirements of the ladders which they serve.

R614-2-11. Drilling Industry -- Walking, Working Surfaces.

A. Guardrails, Handrails and Covers.

1. Guarding of Floor Openings and Floor Holes.

Floor openings and floor holes shall be guarded by a standard railing and toeboards and/or cover.

2. Guarding of Wall Openings.

Wall openings from which there is a drop of more than 6 feet shall be guarded.

3. Guarding of Open-Sided Floors, Platforms, and Runways

a. Every open-sided floor or platform 6 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or equivalent.

b. Standard railing shall be provided on the inside of all mud tank runways unless other means are available to prevent an employee from falling into the mud tanks.

c. Regardless of height, open-sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment and similar hazards shall be guarded with a standard railing and toeboard.

4. Stairway Railings and Guards.

Every flight of stairs having four or more risers shall be equipped with standard stair railings on open sides.

B. Floors, Stairways, and Platforms.

1. Floors, stairways, and platforms shall be free of dangerous projections or obstructions and shall be maintained in good repair and reasonably free from oil, grease, water, or other materials of similar nature. Where the type of operation necessitates working on slippery floor areas, such surfaces shall be protected against slipping by the use of mats, grates, cleats, or other methods to provide reasonable protection.

2. Each corner of a crown block shall be securely bolted or welded to the mast or derrick.

3. Each finger of a finger board shall be bolted or welded to its support beam.

4. Any temporary stabbing board or other temporary boards placed in the derrick shall be securely fastened.

5. On all derricks, ladder platforms shall be installed adjacent to, and shall provide safe access to the work platforms.

6. Ladder platforms are to be located at the crown of all drilling rigs.

7. With the exception of the stabbing board and derrick board, every platform erected on the inside of a derrick shall completely cover the space from the working edge of the platform back to the legs and girts of the derrick.

C. Exits, Access, and Egress.

1. Exits shall be provided to the outside on at least 3 sides of the derrick floor.

2. All work stations shall have two means of egress, except for hopper house.

3. No exit door of the derrick floor, including all doors of the doghouse, shall be held closed with a lock or outside latch while anyone is on the derrick floor.

4. No employee shall slide down any pipe, kelly hose, cable, or rope line except in the event of an extreme emergency.

5. No employee shall use the catline as a means of ascending to or descending from any point in the derrick except in an emergency. Even then, the rotary table shall be locked out and qualified employees shall operate the cathead and controls.

R614-2-12. Drilling Industry -- Hoisting Equipment.

A. Derricks and Cranes.

1. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation of any derrick. Where manufacturer's specifications are not available, the limitations assigned to the equipment shall be based on the determinations of a qualified engineer competent in this field and such determinations will be appropriately documented and recorded.

2. Traveling Blocks shall have an operational limiting device or adequate crown timbers properly installed (Special Services are excluded).

3. Cranes mounted on barges.

a. When a crane is mounted on a barge, the rated load of a crane shall not exceed the original capacity specified by the manufacturer.

b. A load rating chart, with clearly legible letters and figures, shall be provided with each crane, and securely fixed at a location easily visible to the operator.

c. When load ratings are reduced to stay within the limits for list of the barge with the crane mounted on it, a new load rating chart shall be provided.

d. Cranes on barges shall be positively secured.

B. Truck-Mounted Masts and Derricks.

The employer shall require that truck-mounted derricks or masts are not moved while in a raised position. This does not apply to the skidding of a drilling rig.

C. Personnel Hoisting.

1. Well Drilling: Employees shall not ride the traveling blocks to or from the boards (except in cases of emergency).

2. Special Services: Riding hoisting equipment.

a. No employee shall ride traveling blocks when rods or tubing or any other downhole equipment is being moved.

b. Anyone riding the traveling blocks shall wear an approved safety harness with appropriate safety line anchored and adjusted to prevent a fall of over 6 feet.

3. The cat-line shall not be used as a personnel carrier except in an emergency.

D. Drawworks.

1. The drawworks shall not be operated without all guards in position and properly maintained.

2. If lubrication fittings are not accessible with guards in place, machinery shall be stopped for oiling and greasing.

3. The brakes, linkage, and brake flanges of the drawworks shall be checked every day and repaired or replaced as necessary.

E. Cathead.

1. A blunt smooth-edged divider to separate the first wrap of a line on a cathead shall be installed on all manually-operated rope catheads and the clearance between the device and the friction surface of the cathead shall not exceed 1/2 of an inch.

2. The friction surface and flanges of a cathead on which a rope is manually operated shall be smooth and the diameter of the cathead between the flanges shall be uniform throughout its length with an allowable tolerance of 3/8 of an inch.

3. The key seat and projecting key on a cathead shall be covered with a smooth thimble or plate.

4. When the cathead is unattended, no rope or line shall be left wrapped on or in contact with the cathead.

5. A qualified employee shall be at the controls while a cathead is in use. He shall stop the rotation of the cathead immediately in event of an emergency.

6. No splice other than by the manufacturer shall be allowed to come into contact with the friction surface of the cathead.

7. Each cathead using chain shall be equipped with a manually operated cathead clutch or with another device adequate to keep the rotation of the cathead under control when it is in use. The clutch or device shall be of the "nongrab" type and shall release automatically when not manually held in the engaged position.

8. Every chain used in a spinning line shall have a fiber tailrope between 8 inches and 12 inches in length fastened to the pipe end of the chain.

9. Connections between lengths of cathead chain, tong chains, and spinning chain shall be of the connecting link or swivel type and of strength equal to the lighter chain. Connecting links and swivels shall be of a size and type suitable for the chain in use.

10. The operator of a cathead shall keep his operating area clear at all times. That portion of the catline not being used shall be kept coiled or spooled.

F. Wire Ropes.

1. All hoisting lines (wire ropes) shall be visually checked by a competent person daily, and shall be thoroughly inspected at least each 30 days in conjunction with a ton-mile program, or a record made of each 30 day inspection which shall designate defects and deterioration. When the wire rope is slipped or replaced, it shall be recorded on the inspection report as to date and length of wire rope removed. Such written report must be kept on file at the drilling rig and local office.

2. A dead-line anchor for a drilling line shall be so constructed, installed, and maintained that its strength shall at least equal the working strength of the hoisting line.

3. All lines and sand lines shall be visually checked daily when in use. At this time a determination shall be made as to whether the hoisting line shall be cut to bring a new line into the system, or replaced. In no event shall the hoisting line or sand line be allowed to remain in service when the following numbers of broken wires appear in any section of the line:

TABLE 3

BROKEN WIRE-ROPE TABLE

Construction	Number of Broken Wires In One Rope Lay	Number of Broken Wires In One Strand in One Lay
6 x 7	7	3
6 x 19 Seale	11	4
6 x 21 Seale or FW	13	5
6 x 25 FW	18	6
6 x 31	19	6
6 x 36	21	7
18 x 7	18	3
19 x 7	18	3
8 x 19 Seale	16	4
8 x 25 FW	25	6

4. In addition to the above criteria, a hoisting line or sand line shall be removed from service when any of the following conditions exist:

a. When end connections are corroded, cracked, bent, worn, or improperly applied.

b. When evidence of severe kinking, crushing, cutting, or unstranding are noted.

R614-2-13. Drilling Industry -- Blasting and the Use of Explosives.

A. The employer shall permit only authorized and qualified persons to use, handle and/or transport explosives.

B. Transportation of explosives shall meet the provisions of the Department of Transportation regulations.

C. Explosives and related materials shall be stored in approved facilities required under 27 CFR 55 Commerce in Explosives adopted by reference.

D. A blaster shall be qualified in the field of transporting, storing, handling, and use of explosives and have a working knowledge of Federal, State, and Local Laws which pertains to explosives.

R614-2-14. Drilling Industry -- Machine Guarding.

A. All belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, or other reciprocating or rotating parts, with the exception of the cathead, shall be guarded by a guard of sufficient strength to prevent any person from coming in contact therewith, unless they are guarded by location.

B. A rotary table shall have a substantially constructed metal guard adequately covering the outer edge of the table and extending downward to completely cover all the exposed rotating side of the table including the pinion gear.

C. Machinery shall not be operated without all guards properly maintained and in position; except during maintenance, repair, or rigup work or when limited testing may be performed by a qualified person.

D. No employee shall clean or lubricate any machinery where there is danger of contact with a moving part until such machinery has been stopped.

E. Any counterweight above the derrick floor when not fully enclosed shall run away from the working surfaces or be guarded.

F. The employer shall require that the mast crown is equipped with sheave guards which shall prevent the hoisting lines from being displaced from the sheaves during operations or when being raised to or lowered from the operating position.

G. When maintenance or servicing is to be accomplished on electrical lines, air lines, gas lines, or other lines containing hazardous materials, the line being worked on shall be rendered safe by emptying, purging, disconnecting, or other means before work is begun.

R614-2-15. Drilling Industry -- Overwater Operations.

A. When work is performed over water, employees shall be instructed in proper water entry procedures to be used.

B. An emergency means of escape from platforms shall be provided when working over water.

C. Coast Guard approved life jackets or work vests shall be available for and worn by each employee when performing operations over water.

D. Due consideration shall be given when dispatching vessels consistent with weather conditions, sizes of vessels, loading, and other factors.

E. Decks of all vessels shall be kept clean of oil, grease, debris, and free of excess equipment at all times.

F. Wireline units, power packs, tool boxes, and other equipment shall be securely tied down once it has been loaded on a vessel to be transported to or from inland water locations.

G. Mobile service units (when working off a barge) shall be properly secured with chains or wire rope and load binders once it has been spotted and when it is enroute to and from locations.

H. Tag lines shall be used to guide and steady equipment being loaded or unloaded from vessels on inland water locations.

I. It shall be the responsibility of the person skippering a vessel to determine when it is safe or unsafe to tie up or jack up on a well site.

J. When a crane is being used to transfer employees over water, employees shall wear a life jacket or work vest and shall not ride on anything other than an approved personnel net.

K. When handling equipment with a side loader type marine unit hauler the operator shall not lift or lower the base of the equipment being handled below the level of the ground or dock.

L. The operator shall not lift or lower a heavy load with a side loader boom without first extending jacks or outriggers.

R614-2-16. Drilling Industry -- Anchoring and Guy Wires.

Each derrick requiring anchoring or guying, shall follow the manufacturer's recommendations for guying and anchoring. If the manufacturer's recommendations are not available, an appropriate survey by a qualified engineer shall be made. A copy of the manufacturer's recommendations or a signed copy of the engineer's survey shall be made available for inspection on each derrick.

R614-2-17. Drilling Industry -- Air and Hydraulic Pressure.

A. Safety Procedures for Air Compressors.

1. Air compressors used or operated shall be constructed, installed, operated, and repaired to conform to the Engineering Standards of ASME and ANSI.

2. All air compressors shall have at least one air pressure regulator to control proper air flow.

3. The safety relief (safety pop-off) valve on the main air tank shall be checked periodically and kept in proper working order.

4. There shall be no valve in the discharge opening of a safety relief valve or in the discharge pipe connected thereto.

5. The piping connected to the pressure side and discharge side of a safety relief valve shall not be smaller than the normal pipe size openings of the device.

6. The piping from the discharge side of the safety relief device shall be securely tied down.

7. The piping from the discharge side of the safety relief valve shall be sloped in order to drain liquids.

8. All valves and pressure control devices shall be kept in the proper working order.

9. Hydraulic pressure lines shall not be subjected to pressures exceeding those recommended by the manufacturer.

B. Hydraulic Tong Control Mechanism.

1. The input pressure line on power tongs shall be disconnected or disengaged before any repair, replacement, or other work of a similar nature is done on tongs, chains, dies, or their component parts.

2. Pressure lines (hydraulic or air) shall have a safety relief valve which shall never be set higher than manufacturer's specifications for the working pressure of the lines or valve.

3. Hydraulic tongs shall be backed up with a safety device able to withstand the full torque of the power tool.

C. Mud Pits and Tanks, Mud Pumps, Piping and Hoses.

1. All fixed mud guns used for jetting shall be pinned or hobbled when in use and unattended.

2. Hoses shall not be used for jetting operations.

3. When necessary for an employee to enter a mud tank which has contained toxic fluid, adequate personal protective equipment shall be utilized or the tank shall be purged of all harmful substances.

4. Clamps and safety lines or chains shall be used to fasten the kelly hose at the standpipe end to the derrick and at the swivel end to the swivel housing, and all other flexible mud lines shall be appropriately secured.

5. The suction pit or tanks used for the circulation of flammable materials shall not be within 75 feet of well bore.

6. All mud pumps associated with a drilling rig shall be equipped with a safety pressure relief valve and an operating gauge in the system.

7. The safety pressure relief valve shall be set to discharge at a pressure not in excess of the established working pressure of the pump, pipe, and fittings.

8. A guard shall be placed around the shearing pin and spindle of a safety pressure relief valve.

9. The discharge from a safety pressure relief valve shall be piped to a place where it will not endanger employees.

10. There shall be no valve between a pump and its safety pressure relief valve.

11. The piping connected to the pressure side and discharge side of a safety pressure relief valve shall not be smaller than the normal pipe size opening of valve.

12. The piping on the discharge side of a safety pressure relief valve shall be properly secured.

R614-2-18. Drilling Industry -- Drilling Operations.

A. When maintenance or servicing is to be accomplished on power-driven equipment, the immediate source of power to the individual piece of equipment to be worked on shall be locked out. When maintenance or servicing is to be accomplished on electrical lines, air lines, gas lines, or other lines containing hazardous materials, the line being worked on shall be rendered safe by emptying, purging, disconnecting, or other means before work is begun.

B. Drillers shall never engage the rotary clutch without watching the rotary table.

C. Tools or other materials shall not be carried up or down a ladder unless properly secured to the body, leaving both hands free for climbing.

D. The hoisting line (wire rope) shall not be removed from the drum until the traveling blocks are to be laid on the derrick floor, or the traveling blocks are to be held suspended by a separate wire rope.

E. The hoisting line (wire rope) shall not be in direct contact with any derrick member, any stationary equipment, or material in the derrick except the crown block and any traveling block sheaves, a line spooler, a line stabilizer or weight indicator.

F. Every overhead sheave or pulley on which a line spooler counterweight rope runs shall be fastened securely to its support.

G. Every rig shall be equipped with a safety valve (Kelly Cock) with connections for each type of tool joint being used.

H. Blowout Prevention Equipment. While a well is being drilled, tested, completed, reconditioned, or is otherwise being worked on, blowout prevention equipment shall be installed and used in accordance with recognized standards and shall be reasonably adequate to keep the well under control at all times.

The blowout prevention equipment provided shall be approved by the State of Utah Oil, Gas, and Mining Division.

I. Spinning chains shall not be handled near the rotary table while it is in motion. Workers shall not place the chain on the joint of pipe in the mouse hole while the table is rotating.

J. Chains used in connection with drilling or production operations shall be suitable for the type of service. Chains used in a spinning line, in a long line, or on a cathead must be of an approved type.

K. Every drilling rig shall be equipped with a reliable weight indicator.

L. Any weight indicator hung above the floor shall be secured to the derrick by means of a wire rope safety line or chain.

M. Every test plug used above the derrick floor shall be attached to the elevator links by safety line or chain.

N. The operator shall not leave the brake without tying the brake down or securing it with adequate counterbalance unless the drawworks is equipped with an automatic feed control.

O. The operator shall not engage the rotary clutch until the rotary table is clear of personnel and material.

P. The operator shall not leave the controls while the hoisting drum is on motion, except when drilling.

Q. Each rotary tong shall be securely attached to the derrick or a backup post with adequate wire rope safety lines.

R. A mud box or other effective means shall be provided on all rigs to convey any fluids away from the derrick floor while pulling drill stem test or breaking wet joints.

S. Hoses, lines, or chains shall not be handled or used near the rotary table while it is in motion.

T. A kelly pull-back post shall be provided for pulling the kelly back to the rat hold. The pull-back post shall be secured either to the derrick foundation, side sills, or floor sills, and shall not be attached to or in contact with the derrick legs, girts, or braces.

U. Whenever drill pipes, drill collars, or tubing are racked in the derrick provision shall be made for drainage of any fluids or gases in the stands.

V. The toolpusher (or other qualified employee) shall be in charge and present during the operation of raising or lowering a derrick.

W. The employer shall not allow employees under or in a derrick being raised or lowered.

X. No employee shall handle a traveling hoisting line unless he uses a suitable hand guard which shall be secured to the derrick.

Y. The rotary table shall not be used for the final making up or initial breaking out of a pipe connection.

Z. All pipe and drill collars racked in a derrick shall be adequately secured to prevent them from falling across the derrick.

AA. Safety clamps used on drill collars, flush joint pipe, or similar equipment for the purpose of preventing its falling in the well when not held by the elevator, shall be removed from the pipe and drill collars before racking.

BB. Racking foundations shall be designed to withstand the load of racked pipe and drill collars.

R614-2-19. Drilling Industry -- Special Services.

A. Special Services.

1. The owner/operator shall require that all applicable requirements of other sections of these Rules and Regulations, in addition to the following requirements, shall apply to Special Services and Operations.

2. The supervisor of the special service shall hold a pre-job meeting with his crew to review responsibilities for the operations to be performed.

3. Special services fire extinguishers shall be placed in an accessible position.

4. Precautions shall be taken to prevent personnel or vehicles from crossing under or over unprotected wire lines, pressurized hoses, or pipe.

5. There shall be a minimum number of employees in the derrick or within 6 feet of the wellbore during the time a swab line or other wire line is being run in the hole.

6. Smoking or open fires shall be permitted only in designated areas.

7. A frozen flow line or hose shall not knowingly be flexed or hit.

8. Line wipers shall be adequately secured.

9. Oil savers should not be adjusted while the line is in motion except by remote means.

10. Only a qualified person shall operate the cathead.

11. All discharge lines shall be laid with sufficient flexible joints, preventing rigidity so as to prevent excess vibration at wellbore.

12. When using an open ended flow line to flow or bleed off a well, it shall be secured at the end of the flow line and at each 30 foot interval before opening the flow line.

B. Mud Pits and Tanks.

1. Portable tanks shall be located where it is not possible for employees or equipment to come into contact with overhead power lines.

2. All valves and gauges shall be checked to be sure there is no pressure on the lubricator before working on or removing it. Prior to breaking out (rigging down), all pressure shall be bled off the lines that are to be broken out.

3. A lubricator or other adequate control devices shall be used to allow the removal of the downhole tool under controlled conditions.

4. Only necessary personnel shall be permitted near the pressurized lubricator, flow lines, and wellbore.

5. All wellbore adapters, wireline valves, and lubricating equipment shall be of such a design, strength, and material to withstand the maximum surface pressure of the well and the lateral movement of the lubricator.

C. Safety Procedures for Drill Stem Tests.

1. Initial opening of drill stem test tools shall be restricted to daylight hours only.

2. Test line and valves shall be checked, and the test line shall be securely anchored at each end and at each 30 foot interval.

3. When taking a drill stem test, and hydrocarbons appear at the surface, it shall be mandatory that such hydrocarbons are reversed out before coming out of the hole.

4. Drill stem tests shall not be taken in known or expected zones containing H_2S with tubular goods of strengths less than Grade "E" drill pipe.

5. All drill stem tests in known or expected zones containing H_2S shall be reversed out. This shall be done in daylight hours only.

6. A reversing mechanism shall be included in the test tool assembly in order to be able to reverse.

7. The kelly hose shall not be used as part of the test line.

D. Treating.

1. The special services supervisor shall personally check to see that all valves in discharge lines are open before giving orders to pump.

2. During operations each employee designated to handle the pumping shall remain constantly at his designated position while the pump is in operation, unless relieved by an authorized employee as directed by the supervisor on that job.

3. Cementing pressure shall not exceed equipment maximum safe working pressure.

4. All acidizing, fracturing, and hot oil trucks and tanks shall be at least 75 feet from the wellbore.

5. The services supervisor shall see that all flammable fluid spilled on location is adequately covered with dirt before

pumping operations start.

6. Flammable fluids shall not be bled back into open measuring tanks on equipment designed for pumping.

7. All spilled oil or acid shall be covered or properly disposed of after breakout with adequate precautions taken to prevent personnel from contact with such material.

8. All equipment that could produce a source of ignition shall not be permitted within 75 feet of any tank containing a flammable material.

9. When pumping a flammable fluid, all electrical or internal combustion equipment not used for performance of the job, and all fires shall be shut down or off during treatment.

10. All blending equipment used in fracturing operations shall be grounded to a conductive rod driven into the ground and all sand hauling equipment, unloading sand into blender hopper, shall be "electrically bonded" to the blender.

11. All supercharged suction hoses shall be covered with hose covers to deflect fluids when pumping flammable fluids.

R614-2-20. Drilling Industry -- Safety Procedures for Air and Gas Drilling.

A. Drilling compressors (air or gas) shall be located at least 150 feet from the wellbore and in a direction away from the discharge or blooie line.

B. The air or gas discharge line (blooie line) shall be laid in as nearly a straight line as possible from the drilling head. It must be at least 150 feet in length. This discharge line shall be securely coupled and anchored to prevent movement. It shall be laid into a discharge pipe in such a direction from the wellbore as to allow prevailing winds to carry produced or circulated gas away from the rig.

C. All combustible material shall be kept at least 100 feet away from the discharge line.

D. The air line from the compressors to the standpipe shall be of adequate strength to withstand at least the maximum discharge pressure of the compressors used, and shall be checked daily by the compressor operator for any evidence of damage or weakness.

E. All cars, trucks, house trailers, etc., shall be parked at least 75 feet from the wellbore, except when delivering equipment or supplies.

F. Smoking shall not be allowed within 75 feet of the drilling rig while drilling air or gas.

G. Designated employees shall be shown and taught how to use control units and the blowout preventer and all fire fighting equipment.

H. Designated employees shall be shown and taught how to use the emergency shut-off equipment during gas drilling.

I. All pipe connections carrying gas or air to or from the wellbore shall be made up tightly. All lines and connections shall be frequently checked for leaks.

J. In the case of gas drilling, a shut-off valve shall be installed on the main feeder line at least 150 feet from the wellbore; in the case of air drilling, the shut-off valve shall be located near the compressors.

K. When making a connection, the standpipe valve shall be closed and the bleed-off line shall be open before breaking a tool joint.

L. One Class B-C fire extinguisher of at least 150 lbs. dry chemical capacity or equivalent shall be stationed on the job in addition to 4-20# capacity, or their equivalent, fire extinguishers with a Class B-C rating.

KEY: safety
December 4, 1998 34A-6
Notice of Continuation November 2, 2007

R614. Labor Commission, Occupational Safety and Health.
R614-3. Farming Operations Standards.
R614-3-1. Authority, Method of Adoption, and Effective Date.

A. This standard is adopted by authority given the Administrator of the Division of Occupational Safety and Health , Labor Commission, under Title 34A, Chapter 6. As required, adoption is through Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

B. R614-3-1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 14, 16, 17, and 18 are existing standards and are presently in effect. R614-3-10, 11, 13, 15, and 19 are effective October 13, 1986.

R614-3-2. Scope and Definitions.

A. This rule contains Occupational Safety and Health Standards applicable to farming operations, for farms employing eleven (11) or more employees during any part of a year or maintain a labor camp. Family members of farm employers shall not be regarded as employees when making the determination as to number.

B. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Comission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

C. Farming Definitions

1. "Agricultural tractor" means any vehicle, of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive farm implements. All self propelled implements are excluded.

2. "Confined Space" means an open topped space more than four feet deep, or an enclosed space, such as a tank, vessel, silo, vault, pit, that is not designed for continuous employee occupancy, and: (1) contains an actual or potentially hazardous atmosphere or other safety or health hazard; (2) makes ready escape difficult; or (3) restricts entry for rescue purposes.

3. "Farmfield equipment" means tractors or implements, including self propelled implements, or any combination thereof used in agricultural operations.

4. "Farming operation" is defined as any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or similar activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.

5. "Farmstead equipment" means agricultural equipment normally used in a stationary manner. This includes, but is not limited to, materials handling equipment and accessories for such equipment whether or not the equipment is an integral part of a building.

6. "Ground driven components" are components which are powered by the turning motion of a wheel as the equipment travels over the ground.

7. "Guard" or "Shield" is a barrier designed to protect against employee contact with a hazard created by a moving machinery part.

8. "Hand labor operations" means agricultural activities or operations performed by hand or with hand tools. Some examples of "hand labor operations" are the hand harvest of vegetables, nuts, and fruit, hand weeding of crops and hand planting of seedlings. "Hand labor" does not include such activities as logging operations, the care or feeding of livestock, or hand labor operations in canning facilities or packing houses.

9. "Handwashing facility" means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single use towels.

10."Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

11."Labor camp" is defined as farm housing directly related to the seasonal or temporary employment of migrant farm workers. In this context, "housing" includes both permanent and temporary structures under the control of the employer, located on or off the property and that is provided as a condition of employment.

12. "Low profile tractor" means a wheeled tractor possessing the following characteristics: (1) the front wheel spacing is equal to the rear wheel spacing; (2) the clearance from the bottom of the tractor chassis to the ground does not exceed 18 inches; (3) the highest point of the hood does not exceed 60 inches; and (4) the tractor is designed so that the operator straddles the transmission when seated.

13. "Potable water" means water that meets the standards for drinking purposes by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the Bureau of Public Water Supplies, Utah Department of Health.

14. "Power take off shafts" are the shafts and knuckles between the tractor, or other power source, and the first gear set, pulley, sprocket, or other components on power take off shaft driven equipment.

15. "Service building" shall mean a building housing toilets, lavatories, bathing facilities, a service sink, and may also include laundry and such other facilities as may be required.

16. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets, or sanitary privies, which is supplied with toilet paper adequate to employee needs. Toilet facilities may be either fixed or portable.

17. "Wastewater" shall mean discharges from all plumbing facilities, such as restrooms, kitchen, and laundry fixtures, either separately or in combination.

R614-3-3. General Duty Clause and Applicable General Standards.

A. Section 34A-6-201 defines the General Duty Clause.

B. The following General Standards shall apply to farm operations: 29CFR1910.111 Storage and Handling of Anhydrous Ammonia; 29CFR1910.266 Pulpwood Logging.

R614-3-4. Employer and Employee Responsibility.

A. The employer shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found take appropriate action to correct such conditions immediately.

B. The employer shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

C. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe,

if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it should be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes the employee's duty to immediately report the unsafe place, tools, equipment, or conditions to the employer.

D. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

E. No employer or employee shall remove, displace or destroy or carry away any safety devices or safeguard provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees.

R614-3-5. Reporting Requirements for Accidents and Fatalities.

Each employer shall shall meet the injury reporting requirements of R614-1-5.C.

R614-3-6. Recording Occupational Injuries and Illnesses.

A. General. This part provides for record keeping by employers to develop, collect, and analyze information regarding occupational accidents and illnesses.

B. Log and Summary. Each employer having 11 or more employees during any part of a calendar year or who has been notified by the Commission to keep records as part of the "Annual Survey of Occupational Injuries and Illnesses", shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment. The employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. The federal OSHA Form No. 200 or any private equivalent form may be used. The Form or its equivalent shall be completed in the detail provided in the form and instructions contained in Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data processing equipment, the information shall be readable and comprehensible.

C. The employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment under the following circumstances:

1. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred.

2. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

R614-3-7. Safety and Health Protection on the Job Poster.

Each employer shall display in a location convenient to employees the "Safety and Health Protection on the Job" poster. The poster is provided to inform employees of the protections and obligations under the act. The Administrator shall furnish the poster at no charge.

R614-3-8. General Safety Requirements.

A. Good housekeeping is the first law of accident prevention and should be a primary concern of all employers and employees. Floors and platforms shall be free of dangerous projections or obstructions and shall be maintained in good repair and reasonably free from oil, grease, water or other materials of similar nature.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Clothing shall be appropriate for the work being done. Loose clothing which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed as soon as practicable and shall not be worn until properly cleaned.

D. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

E. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

R614-3-9. Medical Services and First Aid.

A. The employer shall insure the availability of medical personnel for advice and consultation on matters of Occupational Health.

B. Emergency Posting Required. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include: (1) Employer or representative, (2) Doctor, (3) Hospital, (4) Ambulance, (5) Fire Department, (6) Sheriff or Police, (7) First aid person.

C. Proper equipment for prompt transportation of the injured person to a physician or hospital or a communication system for contacting necessary ambulance service, shall be provided.

D. In the absence of reasonably accessible medical personnel, a person who has a valid certificate in first aid training from the Mine Safety and Health Administration, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.

E. An adequate supply of first aid supplies shall be readily accessible at the worksite. The first aid supplies shall be encased in suitable sanitary storage places so as to protect them from contamination.

F. Where the employee's eyes or body may be exposed to injurious materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

R614-3-10. Respiratory Protective Equipment.

A. When an employee is or may be exposed to harmful concentrations of gases, vapors, smoke, fumes, mists or dusts created by permanent or temporary work processes, respiratory protective equipment, approved for the purpose, shall be provided by the employer and worn by the employee.

B. Employees shall be trained in the use of respiratory equipment that they may be expected to use.

C. The employer shall ensure that respiratory protective equipment required by these regulations is used as intended by the manufacturer, and that it provides the employee with adequate respiratory protection.

D. Respiratory protective equipment used to protect employees shall be readily available and shall be maintained in good working order and in a sanitary condition.

E. Filter type, cartridge or single use respiratory protective equipment shall not be used in any confined space.

R614-3-11. Requirements for Confined Space Entry.

A. No employee shall be required or permitted to enter a confined space:

1. Unless protected by self contained or airline type respiratory protective equipment, the employer shall ensure that air supplied for respirators by compressors, fans, or similar devices is free of dusts, oil vapors, toxic or noxious fumes or gases; or

2. Unless an approved ventilation system is being used to ensure the removal of any harmful gases, vapors, smoke, fumes, mists, or dusts from within the confined space; or

3. Until appropriate tests have been made immediately prior to entry to confirm the absence of any harmful gases, vapors, smoke, fumes, mists or dusts or a sufficiency of oxygen. Testing shall be done at intervals during an employee's presence in the confined space to ensure no change of conditions; or

4. When flammable or explosive gases are present, until ventilated, purged and all sources of ignition have been controlled or eliminated.

B. An employee required or permitted to enter a confined space where a harmful atmosphere exists or may develop, shall:

1. Wear a safety harness to which is attached a life line tended at all times by another person stationed outside the entrance and so equipped as to be capable of effecting a rescue, and

2. When entered from the top, wear a safety harness or a harness of a type of which will keep the employee in a vertical position in case of rescue.

C. When the work being performed is such that more than one employee is required or permitted to enter a confined space, provision shall be made in the planning of the work to avoid the safety lines or air hoses from becoming entangled.

D. An employee required or permitted to enter a confined space being ventilated with a ventilation system to maintain respirable air, and in which a harmful atmosphere cannot develop shall:

1. Be attended by and in communication with another person stationed at or near the entrance, or

2. Be provided with a means of continuous communication with a person outside, or

3. Be visually checked by a designated person at intervals as often as may be required by the nature of the work to be performed.

R614-3-12. Pesticides.

Pesticide storage, use and clean up shall meet the provisions required by the Utah Department of Agriculture under Title 4, Chapter 14, Utah Pesticide Control Act; the United States Environmental Protection Agency (EPA); and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

R614-3-13. Flammable and Combustible Liquids.

A. This Section applies to the storage of flammable and combustible liquids having a flash point below 200 degrees F (93.3 degrees C).

B. Storage areas shall be kept free of weeds and other combustible material. Open flames and smoking shall not be permitted in flammable or combustible liquids storage areas.

C. Storage tanks shall be provided with a free opening vent to relieve vacuum or pressure which may develop in normal operation or from fire exposure.

D. Tanks and containers for the storage of flammable and combustible liquids aboveground shall be conspicuously marked with the name of the product which they contain and "FLAMMABLE - KEEP FIRE AND FLAME AWAY."

E. Dispensing Flammable Liquids and Combustibles

1. Containers to which flammable liquids are being transferred shall be bonded together to eliminate static electricity.

2. Dispensing units shall be protected against physical damage by suitable means.

3. Dispensing devices (pumps, hoses and nozzles) shall be of approved type and be maintained to prevent leakage.

4. Flammable and combustible liquids shall not be dispensed by pressure from drums, barrels and similar containers. Approved pumps taking suction through the top of the container or approved self closing valves shall be used.

5. Flammable and combustible liquids shall be kept in closed containers when not actually in use.

6. Care shall be taken to eliminate source of ignition where flammable liquids are used.

F. L.P.G. Storage for use shall be in an approved container.

1. Shall have a relief valve on container.

2. Shall have an automatic shut off (thermocoupler) on utilization equipment.

3. Shall have a relief valve between each shut off valve.

R614-3-14. Labor Camp Sanitation.

A. NOTE: FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

B. General

1. Camps which move regularly due to the nature of the work, such as sheep or cattle camps, are exempt from this Part.

2. Each structure made available for occupancy shall comply with the requirements of the applicable building, zoning, electrical, health, fire, and animal control codes and all local ordinances.

3. Labor camp sites shall be constructed to provide adequate surface drainage and shall be isolated at least 100 feet from barnyards, corrals and any existing or potential health hazard.

4. Each structure made available for occupancy shall be of sound construction, shall assure adequate protection against weather, and shall include essential facilities to permit maintenance in a clean and operable condition. Comfort and safety of occupants shall be provided for by adequate heating, lighting, ventilation or insulation when necessary to reduce excessive heat. Total window area in permanent structures should be equal to at least 10 percent and in no case less than 5 percent of the floor area. Windows shall be openable and screened or mechanical ventilation must be provided.

5. Floors, walls and ceilings in permanent and semipermanent structures shall be of smooth, nonabsorbent easily cleanable materials, kept clean and in good repair.

6. In dormitory type facilities beds shall be separated by a horizontal distance of at least five (5) feet, reducible to three (3) feet if beds are alternated head to foot, except in the case of double deck bunks, which shall have a minimum horizontal separation of six (6) feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the health department having jurisdiction.

7. All combustion type room heating devices shall be supplied with proper vent pipes. Gas fired facilities shall meet

standards of the American Gas Association.

8. All service buildings shall:

a. Be located not less than 15 feet and not more than 500 feet from any sleeping quarters served.

b. Where practical, be of permanent construction, and be provided with adequate light, heat and ventilation.

c. Have interiors of smooth, moisture resistant material, to permit frequent washing and cleaning.

d. Have all outer openings effectively screened.

e. Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

C. Water Supply

1. Potable water supply systems for labor camp occupants shall meet the requirements of the Utah State rules and regulations relating to public drinking water supplies.

2. In addition to the requirements of the rules and regulations relating to public drinking water supplies the design of water system facilities shall be based on the suppliers engineer's estimates of water demands, but shall in no case be less than Source Capacity of 50 gallons per day per person and Storage Volume of 25 gallons per person. Distribution System Capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Noncommunity systems in remote areas can be exempted from this requirement, on a case by case basis, if flow from the system is always unregulated and free flowing. The peak hourly flow should be calculated for the number of fixture units presented in the Utah Plumbing Code.

3. The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

4. Construction of a public drinking water supply system intended to serve occupants of any labor camp shall not commence until plans prepared by a licensed professional registered engineer have been submitted to and approved in writing by the Utah State Department of Health. Following construction the system may not be placed in service until a final inspection is made by a representative of the Utah State Department of Health or the local health department having jurisdiction.

5. Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample, must be obtained before being placed into service. Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the health department having jurisdiction.

6. In any labor camp where it is infeasible to pipe water into the area, an alternate supply may be permitted upon approval of the health department having jurisdiction.

D. Wastewater Disposal

1. All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the labor camp property line.

2. Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the Utah State Code of Waste Disposal Regulations. Unless water usage rates are available, design shall be based on not less than 50 gallons per day per person.

3. All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Health, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

E. Toilet Facilities and Plumbing.

1. Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by a sound resistant wall. Direct line of sight to each restroom entrance shall be effectively obstructed. Separate facilities for men and women are not required in single family quarters.

2. Soap and toilet tissue in suitable dispensers, and individual towels or other approved hand drying facilities shall be provided in restrooms. The use of common towels in connection with such facilities is prohibited except in single family quarters.

3. Suitable waste receptacles with lids shall be provided for each restroom.

4. Adequate plumbing fixtures shall be available to all labor camp occupants as required below:

TABLE 1

REQUIRED RATIO OF PLUMBING FIXTURES - LABOR CAMP OCCUPANTS FOR SERVICE BUILDINGS

Plumbing Fixtures	Ratio of Plumbing Fixtures for Labor Camp Occupants(1)	
	Males	Females
Water Closets	1/10	1/8
Urinals(2)	1/25	---
Lavatories	1/12	1/12
Shower/Bath	1/8	1/8

(1) or fraction thereof.
(2) one unit for each 25 men or fraction thereof, up to 150 men, after which one additional unit shall be provided for each 50 persons.

5. Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure. Water will be provided for showers and lavatories at a minimum temperature of 90 degrees F.

6. In camps where dormitory facilities are provided or where individual family units are not plumbed, sanitary drinking fountains shall be conveniently located.

7. Where water cannot be made available, exceptions to the above requirements may be granted upon approval of the Director or local health authorities having jurisdiction.

8. All plumbing in labor camps shall comply with provisions of Utah Plumbing Code, and applicable local plumbing codes.

9. Essential laundering facilities shall be available to camp occupants and if included as part of the labor camp facilities shall provide for each 40 occupants, or fraction thereof, at least one laundry tray, washtub, or washing machine served with an adequate supply of water.

F. Maintenance

1. The employer has the duty of controlling the conduct of camp occupants and shall make at least one daily inspection of the entire camp while in operation, for these purposes. All camp toilet and washroom facilities shall be inspected as necessary.

2. All buildings, rooms and equipment and the grounds surrounding them shall be maintained in a clean and operable condition and be protected from rubbish accumulation.

3. All necessary means shall be employed to eliminate and control any infestations of insects and rodents within all parts of any labor camp. This shall include approved screening or other control of outside openings in structures intended for occupancy or food service facilities.

4. Each bed, bunk, cot or other sleeping facility for use by occupants shall be maintained in a sanitary condition.

G. Food Service

1. All food, food service employees, ice, vending machines, food storage, preparation and serving facilities made available by the camp management except those restricted to individual or single family quarters shall comply with the requirements of the Utah State Food Service Sanitation Regulations.

2. Where occupant is permitted or required to cook foods, a space for kitchen facilities shall be provided, and shall be equipped with a cooking stove in good working order and with adequate and sufficient fuel, a kitchen sink, a refrigerator and convenient storage space for food and necessary utensils. All food items provided by camp management shall be wholesome and suitable for human consumption.

H. Solid Wastes.

Solid wastes originating in any labor camp shall be stored in a sanitary manner, in watertight containers with lids, or the equivalent, approved by the Local Health Department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the State or Local Health Department having jurisdiction.

I. Reference Code.

1. Codes and regulations made part of these regulations by reference are:

a. Utah Plumbing Code

b. State of Utah Public Drinking Water Regulations

c. Food Service Sanitation Regulations

d. Code of Waste Disposal Regulations

e. Recreational Vehicle Park Sanitation Regulations.

f. FR Vol. 59, No. 137, Tuesday July 19, 1994, pages 36695 to and including 36700, "Retention of DOT Markings, Placards, and Labels; Final Rule" is incorporated by reference.

2. All are available on request to: Utah State Department of Health, Division of Environmental Health or the Labor Commission, Division of Occupational Safety and Health.

R614-3-15. Field Sanitation.

A. NOTE: FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

B. This Rule shall apply to any farming operation where 11 or more employees are engaged on any given day in hand labor operations in the field.

C. Employers shall provide the following for employees engaged in hand labor operations in the field, without cost to the employee.

1. Potable drinking water.

a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.

b. The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet employee's needs.

c. The water shall be dispensed in single use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

2. Toilet and handwashing facilities.

a. One toilet facility and one handwashing facility shall be provided for each thirty (30) employees or fraction thereof, except as stated in (4).

b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to insure privacy.

c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other, and within one quarter (1/4) mile of each employee's place of work in the field. Where it is not feasible to locate facilities accessibly and within the required distance due to the terrain, they shall be located at the point of closest vehicular access.

d. Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

3. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

a. Drinking water containers shall be covered, cleaned and refilled daily.

b. Toilet facilities shall be operational and maintained in clean and sanitary condition.

c. Handwashing facilities shall be maintained in clean and sanitary condition; and

d. Disposal of wastes from facilities shall not cause unsanitary conditions.

4. Employees shall be allowed reasonable opportunities during the workday to use the facilities.

R614-3-16. Slow Moving Vehicle.

A. Farm field equipment operated at a speed of 25 mph or less on a highway shall have lamps, reflectors and a slow moving vehicle emblem as required by the Utah Department of Public Safety or local law enforcement agency.

B. Every animal drawn vehicle shall be equipped with a slow moving vehicle emblem as required by the Utah Department of Public Safety or local law enforcement agency.

R614-3-17. Roll Over Protective Structures (ROPS) for Agricultural Tractors.

Agricultural tractors manufactured after October 25, 1976, shall meet the following requirements:

A. Roll over protective structure. Unless exempted under 51.4 a roll over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee. ROPS used on wheel type tractors shall meet the test and performance requirements of SAE J 1194 "Roll over Protective Structures (ROPS) for Wheeled Agricultural Tractors and SAE J 208d" Safety for Agricultural Equipment and ROPS used on track type tractors shall meet the test and performance requirements of UOSH Construction Standards Part 1000.

B. Exempted uses:

1. "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance

requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein.

2. "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein.

3. Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers and fruit harvesters.)

C. Seatbelts. Where the ROPS are required by this section, the employer shall:

1. Provide each tractor with a seatbelt which meets the requirements of 51.5.

2. Instruct each employee in the use of seatbelts to ensure use while the tractor is moving.

D. ROPS equipped tractors shall be fitted with seat belt assemblies (Type 1) conforming to the following: SAEJ114, J117, J140a, J141, J339a, and J800c, except as noted hereafter.

1. Where a suspended seat is used, the seat belt shall be fastened to the movable portion of the seat to accommodate the ride motion of the operator.

2. The seat belt anchorage shall be capable of withstanding a static tensile force of 4448N (1000 lbf) at 45 degrees to the horizontal equally divided between the anchorages. The seat mounting shall be capable of withstanding this force plus a force equal to four times the force of gravity on the mass of all applicable seat components applied 45 degrees to the horizontal in a forward and upward direction. In addition, the seat mounting shall be capable of withstanding 2224N (500 lbf) belt force plus two times the force of gravity on the mass of all applicable seat components both applied at 45 degrees to the horizontal in an upward and rearward direction. Floor and seat deformation is acceptable provided there is no structural failure or release of the seat adjuster mechanism or other locking device. The seat adjuster or locking device need not be operable after application of the test load.

E. Protection from spillage. Batteries, fuel tanks, oil reservoirs, and coolant systems shall be constructed and located or sealed to assure that spillage will not occur which may come in contact with the operator in the event of an upset.

F. Protection from sharp surfaces. All sharp edges and corners at the operator's station shall be designed to minimize operator injury in the event of an upset.

G. Remounting. Where ROPS are removed for any reason, they shall be remounted so as to meet the requirements of this paragraph.

H. Labeling. Each ROPS shall have a label, permanently affixed to the structure, which states:

1. Manufacturer's or fabricator's name and address;

2. ROPS model number, if any;

3. Tractor makes, models, or series numbers that the structure is designed to fit; and

4. That the ROPS model was tested in accordance with the requirements of this rule.

I. Operating Instructions. Every employee who operates an agricultural tractor shall be informed of the operating practices listed below and of any other practices dictated by the work environment. Such information shall be provided at the time of initial assignment and at least annually thereafter.

TABLE 2

EMPLOYEE OPERATING INSTRUCTIONS

1. Securely fasten your seat belt if the tractor has a ROPS.
2. Where possible, avoid operating the tractor near ditches, embankments, and holes.
3. Reduce speed when turning, crossing slopes, and on rough, slick, or muddy surfaces.
4. Stay off slopes too steep for safe operation.
5. Watch where you are going, especially at row ends, on roads, and around trees.
6. Do not permit others to ride.
7. Operate the tractor smoothly, no jerky turns, starts, or stops.
8. Hitch only to the drawbar and hitch points recommended by tractor manufacturers.
9. When tractor is stopped, set brakes securely and use park lock if available.

R614-3-18. Guarding of Farm Field Equipment, Farmstead Equipment.

A. This section applies to all farm field equipment and farmstead equipment manufactured after October 25, 1976. Equipment manufactured prior to that date shall meet the manufacturers specifications for guards.

B. Operating instructions. At the time of initial assignment and at least annually thereafter, the employer shall instruct every employee in the safe operation and servicing of all covered equipment with which he is or will be involved, including at least the following safe operating practices:

1. Keep all guards in place when the machine is in operation.

2. Permit no riders on farm field equipment other than persons required for instruction or assistance in machine operation;

3. Stop engine, disconnect the power source, and wait for all machine movement to stop before servicing, adjusting, cleaning, or unclogging the equipment, except where the machine must be running to be properly serviced or maintained, in which case the employer shall instruct employees as to all steps and procedures which are necessary to safely service or maintain the equipment;

4. Make sure everyone is clear of machinery before starting the engine, engaging power, or operating the machine;

5. Lock out power before performing maintenance or service on farmstead equipment.

C. Methods of guarding. Each employer shall protect employees from coming into contact with hazards created by moving machinery parts as follows:

1. Through the installation and use of a guard or shield or guarding by location.

2. Whenever a guard or shield or guarding by location is infeasible, by using a guardrail or fence.

D. Strength and design of guards.

1. Where guards are used to provide the protection required by this section, they shall be designed and located to protect against inadvertent contact with the hazard being guarded.

2. Unless otherwise specified, each guard and its supports shall be capable of withstanding the force that a 250 pound individual, leaning on or falling against the guard, would exert upon that guard.

E. Guards shall be free from burrs, sharp edges, and sharp corners, and shall be securely fastened to the equipment or building.

F. Guarding by location. A component is guarded by location during operation, maintenance, or servicing when, because of its location, no employee can inadvertently come in contact with the hazard during such operation, maintenance, or servicing. Where the employer can show that any exposure to hazards results from employee conduct which constitutes an isolated and unforeseeable event, the component shall also be considered guarded by location.

G. Guarding by railings. Guardrails or fences shall be capable of protecting against employees inadvertently entering the hazardous area.

H. Servicing and maintenance. Whenever a moving machinery part presents a hazard during servicing or maintenance, the engine shall be stopped, the power source disconnected, and all machine movement stopped before

servicing or maintenance is performed, except where the employer can establish that:

1. The equipment must be running to be properly serviced or maintained;

2. The equipment cannot be serviced or maintained while a guard or guards otherwise required by this standard are in place; and

3. The servicing or maintenance can be safely performed.

I. Farm field equipment

1. Power take off guarding. All power take off shafts, including rear, mid or side mounted shafts, shall be guarded either by a master shield or by other protective guarding.

a. All tractors shall be equipped with an agricultural tractor master shield on the rear power take off except where removal of the tractor master shield is permitted by (2). The master shield shall have sufficient strength to prevent permanent deformation of the shield when a 250 pound operator mounts or dismounts the tractor using the shield as a step.

b. Power take off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system. Where power take off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take off shaft which protrudes from the tractor.

c. Signs shall be placed at prominent locations on tractors and power take off driven equipment specifying that power drive system safety shields must be kept in place.

2. Other power transmission components.

a. The mesh or nip points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded.

b. All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, except smooth shaft ends protruding less than one half the outside diameter of the shaft and its locking means.

c. Ground driven components shall be guarded if any employee may be exposed to them while the drives are in motion.

3. Functional components. Functional components, such as snapping or husking rolls, straw spreaders and choppers, cutterbars, flail rotors, rotary beaters, mixing augers, feed rolls, conveying augers, rotary tillers, and similar units, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with normal functioning of the component.

4. Access to moving parts. Guards, shields, and access doors shall be in place when the equipment is in operation. Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

a. A readily visible or audible warning of rotation; and

b. A safety sign warning the employee to look and listen for evidence of rotation and not remove the guard or access door until all components have stopped.

J. Farmstead equipment.

1. Power take off guarding.

a. All power take off shafts, including rear, mid, or side mounted shafts, shall be guarded either by a master shield or other protective guarding.

b. Power take off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system.

c. Where power take off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take off shaft which protrudes from the tractor.

d. Signs shall be placed at prominent locations on power take off driven equipment specifying that power drive system safety shields must be kept in place.

2. Other power transmission components. The mesh or nip points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded. All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, with the exception of:

a. Smooth shafts and shaft ends (without any projecting bolts, keys, or set screws), revolving at less than 10 rpm, on feed handling equipment used on the top surface of materials in bulk storage facilities; and

b. Smooth shaft ends protruding less than one half the outside diameter of the shaft and its locking means.

3. Functional components, such as choppers, rotary beaters, mixing augers, feed rolls, conveying augers, grain spreaders, stirring augers, sweep augers, and feed augers, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with the normal functioning of the component. All accessible screw conveyors shall be guarded by substantial covers or gratings, or with an inverted horizontally slotted guard of the trough type, which will prevent employees from coming into contact with the screw conveyor. Such guards may consist of horizontal bars spaced so as to allow material to be fed into the conveyor, and supported by arches which are not more than 8 feet apart. Screw conveyors under gin stands shall be considered guarded by location.

4. Sweep arm material gathering mechanisms used on the top surface of materials within silo structures shall be guarded. The lower or leading edge of the guard shall be located no more than 12 inches above the material surface and no less than 6 inches in front of the leading edge of the rotating member of the gathering mechanism. The guard shall be parallel to, and extend the fullest practical length of, the material gathering mechanism.

5. Exposed auger flighting on portable grain augers shall be guarded with either grating type guards or solid baffle type covers as follows:

a. The largest dimensions or openings in grating type guards through which materials are required to flow shall be 4-3/4 inches. The area of each opening shall be no larger than 10 square inches. The opening shall be located no closer to the rotating flighting than 2-1/2 inches.

b. Slotted openings in solid baffle type covers shall be no wider than 1-1/2 inches, or closer than 3-1/2 inches to the exposed flighting.

6. Access to moving parts. Guards, shields, and access doors shall be in place when the equipment is in operation. Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

a. A readily visible or audible warning of rotation; and

b. A safety sign warning the employee to:

(1) look and listen for evidence of rotation; and

(2) not remove the guard or access door until all components have stopped.

K. Electrical disconnect means. Application of electrical power from a location not under the immediate and exclusive control of the employee or employees maintaining or servicing equipment shall be prevented by:

1. providing an exclusive, positive, locking means on the main switch which can be operated only by the employee or employees performing the maintenance or servicing; or

2. there is an electrical disconnect switch available to the employee within 15 feet of the equipment upon which maintenance or service is being performed; and

3. a sign is prominently posted near each hazardous component which warns the employee that unless the electrical disconnect switch is utilized, the motor could automatically reset while the employee is working on the hazardous

component.

R614-3-19. Electrical.

A. Electrical installation shall conform to the requirements of the local authority having jurisdiction provided that the requirements are substantially similar to the latest published addenda or revision of the National Electrical Code, ANSI/NFPA 70 and Standard for Electrical Safety Requirements for Employees Work Places ANSI/NFPA 70e.

B. Protection of Employees.

1. The employer shall inspect all electrical installations and utilization equipment as necessary to maintain it in good repair. Any damage which may be a hazard to employees shall be repaired prior to use by an employee.

2. No employer shall permit an employee to work or operate equipment within 10 feet of an electrical power circuit to which contact may be made, unless:

a. The employee is protected against electrical shock by deenergizing the circuit and grounding it or by guarding it by effective insulation or other means.

b. The employee is trained in recognition and avoidance of hazards associated with electrical circuits.

3. No employee shall be permitted or required to use electrical utilization equipment that is not intrinsically safe and approved for the location.

KEY: safety
December 4, 1998 34A-6-202
Notice of Continuation November 2, 2007

R614. Labor Commission, Occupational Safety and Health.
R614-4. Hazardous Materials.
R614-4-1. Flammable Solids.

A. No source of ignition shall be permitted in locations where a hazard of dust explosion might exist until all dust producing operations have been stopped, airborne dust allowed to settle, and accumulated dusts and closed dust containers removed to an extent which will remove the hazard of dust explosion. A well administered flame permit system shall be established requiring inspection and approval by a responsible person prior to allowing spark or flame producing devices into such areas.

B. Adequate separators shall be provided to prevent iron, rocks or other sparking materials from entering, grinding, shredding, pulverizing or mixing where a hazard of dust explosion exists.

C. Machines and equipment in which the hazard of a dust explosion exists shall be so located, constructed, enclosed or vented that the force of an explosion in the machine or equipment may be dissipated without endangering employees in the regular performance of their duties.

D. Dust collectors for combustible dusts which present an explosion hazard shall be located outdoors or in detached rooms of fire resistant construction and shall be provided with adequate explosion vents, except that liquid spray type collectors may be located within buildings. Care must be exercised in the selection of liquid dust collectors.

E. Ignition by static sparks is an extreme hazard in the processing of metal powders. In addition to electrically grounding and crossbonding of all equipment, floor surfaces shall be electrically conductive and employees shall be equipped with conductive footwear. Floors shall not exceed 250,000 ohms resistance to ground. Maintaining a relative humidity between 55 and 60 percent aids in eliminating static buildup; however, relative humidity level is not a positive means of eliminating static electricity hazards. A high relative humidity shall not be used in rooms used to store, handle or process materials which are affected by moisture such as metal dusts.

F. Extreme care shall be exercised in the processing and storage of metal powders such as aluminum and magnesium to prevent water contact with the materials. Moisture reacts with powdered metals and generates hydrogen gas which is highly explosive. Materials shall be stored in tightly sealed containers and shall be brought to ambient temperatures prior to opening to prevent condensation inside the container.

G. Provisions not covered by this section shall be carried out according to the National Fire Code, Volume 3, 1992, Combustible Solids and dust Explosions, or the latest addenda or revision of that code. National fire prevention codes are also distributed as ANSI Z-12.

R614-4-2. Definitions.

A. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

B. Explosives Definitions

1. "American Table of Distances" also known as Quantity Distance Tables - means American Table of Distances for Storage of Explosives as revised and approved by the Institute of the Makers of Explosives, November 5, 1971.

2. "Ammonium nitrate" - A chemical compound represented by the formula NH_4NO_3.

3. "Ammunition" - All components and any explosives case or contrivance prepared to form a charge, complete round, or cartridge for cannon, howitzer, mortar, or small arms, or for any other weapon, torpedo warhead, mine, depth charge, demolition charge, fuse, detonator, projectile, grenade, guided missile, rocket, pyrotechnics; and all chemical agents, fillers and associated hazardous materials.

4. "Ammunition and explosive materials operating area" - A restricted area specifically designed and set aside from other positions of an installation for the manufacturing, processing, storing and otherwise handling of ammunition or explosive materials.

5. "Approved" or "approval" - Means sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency.

6. "Authorized person" - Means a person approved or assigned by the employer to perform a specific type of duties or to be at a specific location or locations at the job site.

7. "Barricaded" - An intervening approved barrier, natural or artificial, of such type, size and construction as to limit the effect of an explosion on nearby buildings or exposures.

8. "Blasting agent" - Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive. Provided, that the finished product as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

9. "Blast area" - The area of a blast, including the area immediately adjacent, within the influence of flying rock missiles.

10. "Blaster" - The person or persons authorized to use explosives for blasting purposes and meeting the qualifications contained in Part 109.22.2.

11. "Blasting cap" - A metallic tube closed at one end, containing a charge of one or more detonating compounds, and designed for and capable of detonation from the sparks or flame from a safety fuse inserted and crimped into the open end.

12. "Bulk mix delivery equipment" - Equipment (Usually a motor vehicle with or without mechanical delivery device) that transports materials in bulk form for mixing, or loading directly into blast holes, or both.

13. "Bus wire" - An expendable wire, used in parallel or series in parallel circuits, to which are connected the leg wires of electric blasting caps.

14. "Compatibility" - The ability of explosives, explosive materials, ingredients or compositions to remain unaffected when in contact with other materials or containers.

15. "Connecting wire" - An insulated expendable wire used between electric blasting caps and the leading wires or between the bus wire and the leading wires.

16. "Deflagration" - A very rapid combustion, sometimes accompanied by flame, sparks, or spattering of burning particles. Although classed as an explosion a deflagration generally implies the burning of a substance with self-contained oxygen so that the reaction zone advances into the unreacted material at less than the velocity of sound.

17. "Delay mechanism" - A mechanism designed to initiate detonation at a predetermined period of time after energy is applied to the ignition system.

18. "Detonate or detonation" - To be changed by exothermic chemical reaction usually from a solid or liquid to

a gas with such rapidity that the rate of advance of the reaction zone into the unreacted material exceeds the velocity of sound in the unreacted material; that is, the advancing reaction zone is preceded by a shock wave.

19. "Detonating cord" - A flexible cord containing a center core of high explosive and used to initiate other explosives.

20. "Detonator" - Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, and the non-electric instantaneous and delay blasting caps.

21. "Electric blasting cap" - A blasting cap designed for and capable of detonation by means of an electric current.

22. "Emulsion explosive" - An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel: May be classified as Explosives Class A, Explosives Class B, or blasting agents.

23. "Explosive" - The term explosive includes any chemical compound or mechanical mixture which, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a very rapid chemical change with the evolution of large volumes of highly heated gases which exert pressures in the surrounding medium. The term applies to materials that either detonate or deflagrate.

24. "Class A Explosives" - Explosives which possess detonating or otherwise maximum hazard; such as, but not limited to, dynamite, nitroglycerin, lead azide, blasting caps and detonating primers.

25. "Class B Explosives" - Explosives which possess flammable hazard; such as, but not limited to, propellant explosives, photographic flash powders, and some special fireworks.

26. "Class C Explosives" - Explosives which contain Class A or Class B explosives, or both, as components but in restricted quantities.

27. "Explosive Materials" - These include explosives, blasting agents and detonators. This term includes, but is not limited to, dynamite and other high explosives, slurrys, emulsions, water gels, blasting agents, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, pyrotechnics, pyrotechnic compositions, fireworks (special and common), ammunition, propellent and propellent compositions.

28. "Fireworks" - A common synonym for Pyrotechnics (special and common).

Special Fireworks - are Class B explosives as defined by the U.S. Department of Transportation.

Common Fireworks - are Class C explosives as defined by the U.S. Department of Transportation.

29. "Fuse Lighters" - Special devices for the purpose of igniting safety fuse.

30. "Hazard" - A source of danger; exposure or liability to injury or harm.

31. "Inert" - Containing no explosives, active chemicals or pyrotechnics.

32. "Leading Wire" - An insulated wire used between the electric power source and the electric blasting cap circuit.

33. "Magazine" - Any building or structure or container other than an explosives manufacturing building approved for the storage of explosive materials.

34. "Mass Detonation" - Mass Explode - The virtually instantaneous explosion of a mass of explosives when only a small portion is subjected to fire, severe concussion or impact, the impulse of an initiating agent, or to the effect of a considerable discharge of energy from without.

35. "Misfire" - An explosive charge which failed to detonate.

36. "Motor Vehicle" - Any self-propelled vehicle.

37. "Oxidizer" or "Oxidizing Material" - A substance, such as a nitrate, that readily yields oxygen or other oxidizing substance to stimulate the combustion of organic matter or other fuel.

38. "Plant" - The land, buildings, and machinery used in carrying on a trade or business.

39. "Primer" - A cartridge or container of explosives into which a detonator is inserted or attached.

40. "Propellant" - An explosive material whose rate of combustion is low enough, and its other properties suitable, to permit its use as a propelling charge. A propellant may be either solid or liquid. A single base propellant composition consists primarily of matrix of nitrocellulose. A double base propellant composition contains nitrocellulose and nitroglycerine. A composite propellant composition contains an oxidizing agent in a matrix of binder.

41. "Pyrotechnics or Pyrotechnic Compositions" - A mixture of materials consisting essentially of an oxidizing agent (oxident) and a reducing agent (fuel), that is capable of producing an explosive self sustaining reaction when heated to its ignition temperature; such as, but not limited to, devices used to produce sound, colored lights or smokes for signaling, a bright light for illumination, and time delays.

42. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work or the project.

43. "Restricted Area" - Any area, from which personnel, aircraft, or vehicles, other than required for operations, are excluded for reasons of safety and security.

44. "Safety Fuse" - A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a detonator.

45. "Semiconductive Hose" - A hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground. Hose of not more than 2 megohms resistance over this entire length and of not less than 5,000 ohms per foot meets the requirement.

46. "Sensitivity" - A physical characteristic of an explosive material, classifying its ability to react to externally applied energy or changes in environment.

47. "Shield" - A safeguard securely braced and of a strength proven sufficient to withstand the effects of the maximum credible incident involving the item being handled.

48. "Slurry" - An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener. Slurrys may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

49. "Small Arms Ammunition" - Any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns.

50. "Small Arms Ammunition Primers" - Are small percussion-sensitive explosive charges, encased in a cup, used to ignite propellant powder.

51. "Smokeless Propellants" - Solid propellants, commonly called smokeless powders in the trade, used in small arms ammunition, cannon, rockets, propellant-actuated power devices, etc.

52. "Stability" - The ability of an explosive material to retain chemical and physical properties when exposed to specific environmental conditions over a particular period of time.

53. "Stemming" - A suitable inert or incombustible device used to confine or separate explosives in a drill hole, or to cover explosives in mudcapping.

54. "Substantial Dividing Wall" - A structure designed to resist the effects of accidental explosions or to prevent

propagation of detonation by blast or fragments.

55. "Water Gels" - An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent. Water gels may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

R614-4-3. Explosive Materials, Purpose Scope and Responsibility.

A. Purpose: To set forth safe practices and standards for work performed in the manufacture and use of explosives, explosive material, ammunition, pyrotechnics, and related materials.

B. Scope and Application: These standards shall apply to the manufacture, testing, research, storage and use of explosives, explosive material, ammunition, pyrotechnics, fireworks (special and common), propellants, propellent compositions and related materials within the boundaries of the State of Utah. These standards shall apply to employers who employ one or more employees. These standards shall not apply to the laboratories of schools and colleges when confined to educational purposes or to explosive materials in the forms prescribed by the official United States Pharmacopeia or the National Formulary and used in medicines and medicinal agents.

C. Responsibility: Prior to starting new operations, it shall be the responsibility of every manufacturer within the scope of this standard to notify in writing the Administrator of the Utah Occupational Safety and Health Division of the Labor Commission.

R614-4-4. Explosive Materials, General Requirements.

A. Any new or existing operation shall have written operating rules and practices developed and approved by management as being in accordance with this part. The operating rules and practices shall include but are not limited to such items as:

1. Safety requirements,
2. Personal protective clothing and equipment,
3. Personnel and explosive material limits,
4. Equipment designation, inspection and maintenance,
5. Location and sequence of operations,
6. Housekeeping procedures,
7. Mixing procedures,
8. Destruction or disposal of explosive material,
9. Test on product and ingredients for compatibility and sensitivity before production.

B. No deviations from the operating rules and practices shall be permitted without written management approval.

C. An emergency action plan shall be in writing and shall cover those designated actions employers and employees must take to ensure employee safety in emergencies (i.e., fire, explosion, and adverse weather conditions). The following elements, at a minimum, shall be included in the plan:

1. Emergency evacuation procedures and emergency escape route assignments;

2. Procedures to be followed by employees who remain to operate critical operations or fight fires before they evacuate;

3. Procedures to account for all employees after emergency evacuation has been completed;

4. Rescue and medical duties for all employees after emergency evacuation has been completed;

5. The preferred means of reporting explosions, fires, and other emergencies;

6. Where fire departments or other agencies are depended on for emergency assistance, prior notice shall be given of potential hazards, and

7. Names or regular job titles of persons or departments to be contacted for further information or explanation of duties under the plan.

D. Employees shall be trained regarding pertinent requirements of R614-4-4.A.,B., and C.

E. Applicable portions of the operating rules and practices shall be convenient to all employees involved in the operation. Supervisory personnel shall maintain copies of the overall operating procedure and be responsible for the enforcement of its provisions.

F. Buildings on explosives materials plant sites shall be separated by minimum distances conforming to the requirements of the "Intra Plant Distance Table for Use only Within Confines of Explosives Manufacturing Plants" which Table is contained in "The American Table of Distances", 1991 edition as published by the Institute of Makers of Explosives, and incorporated herein by this reference in this rule; except those buildings or sites that meet the specific requirements of other organizations such as the Department of Defense.

G. Mixing facilities for blasting agents shall be separated from storage facilities and each other in accordance with the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" which Table is contained in "The American Table of Distances", 1991 edition as published by the Institute of Makers of Explosives, and incorporated herein by this reference in this rule.

H. All explosive material operations shall be scrutinized to devise methods for reducing the number of employees exposed, or the quantity of material subject to a single incident. Where necessary to protect employees, appropriate shields, substantial dividing walls or barricades shall be provided to shield employees from hazards; where this is not practicable, work by remote control shall be utilized.

I. An explosive material shall not be put in production unless safe working limits have been determined and posted. Operations shall be shut down whenever limits are exceeded.

J. Appropriate visual inspections shall be made of mixing, conveying, packaging, or other equipment to establish that such equipment is in safe operating condition. All problems relating to the safety of employees shall be corrected.

K. Floors and work surfaces in hazardous locations shall be constructed to facilitate cleaning and shall have no cracks or crevices in which explosive material may lodge.

L. Buildings shall be cleaned to prevent accumulations of explosive materials. Combustible or explosive waste shall be removed from buildings as often as necessary.

M. Explosive material spills shall be cleaned up immediately. An appropriate cleaning and collection system for hazardous residues shall be provided and used.

N. Waste explosives and materials contaminated with explosives shall be kept separate from all other waste.

O. Care shall be exercised so that foreign objects or materials do not get into explosive materials.

P. Appropriate tools and equipment shall be used in explosive materials operations.

Q. Only properly identified and inspected explosives materials shall be mixed.

R. Finished explosive materials shall be identified.

S. No person shall store, handle or transport explosives or materials when such storage handling, and transportation of explosives or material constitutes an undue hazard to life.

T. Explosive material areas shall be placarded at each entrance. Personnel entering these areas shall present the proper credentials and turn over all articles prohibited by management before entering the area. Plant boundaries shall be fenced unless topography and/or other physical considerations accomplish this; the boundaries of restricted areas shall be posted at intervals to warn against trespassing.

U. Parking of vehicles in restricted areas near explosives facilities shall be controlled to minimize fire and explosion hazards and prevent congestion in event of emergency. Vehicles shall be parked in designated areas only.

R614-4-5. Building Construction.

A. Buildings used for explosive materials shall be of a safe design for the materials being handled and shall be maintained in that condition.

B. Heating equipment shall be installed in a manner to prevent ignition, deflagration or explosion of the materials being handled.

C. Buildings where dust, fumes, or vapors are possible shall be adequately ventilated, at the source of the hazard. Exhaust fans through which combustible dust or flammable vapors pass shall be equipped with nonsparking blades (or casing lined with nonsparking material) and approved motors. The entire ventilating system shall be bonded electrically and grounded properly.

D. Cleaning and collection systems shall be installed and maintained in a manner that takes into consideration the materials being handled.

R614-4-6. Electrical.

A. All electrical switches, controls, motors, wiring and equipment located in explosive material plants shall conform to the requirements of 29 CFR 1910 Chapter S (Electrical).

B. In any operations where a continuous supply of power is required, the lack of which may cause a hazard to employees an alternate source of power shall be provided.

C. The primary electrical supply to an explosives area shall be so arranged that it can be cut off by switches located at one or more central points away from the area.

D. When static electricity is a hazard nonsparking conductive floors and work surfaces or other approved methods to control and disperse static electricity is required, continuity of grounding on all mechanical devices shall be assured.

E. Only artificial lighting devices approved for the location shall be permitted in explosive areas.

R614-4-7. Fire, and/or Explosion Prevention.

A. No person shall take matches, lighters or other fire, flame, heat or spark producing devices into any restricted area containing ammunition, explosive material or readily ignitable flammable materials except by written authorization. When such authority has been received, a carrying device, too large to fit into the pockets, shall be used for matches, lighters, and similar materials. The carrying of and the use of "strike anywhere" matches are prohibited.

B. An employee whose clothing is contaminated with explosive or flammable material to the degree that it may endanger the safety of the employee shall not smoke, go near fire, open flame or spark producing devices.

C. Smoking is prohibited except in designated smoking areas.

D. The land within 25 feet of any explosive material manufacturing or mixing building shall be kept clear of rubbish, brush, dried grass, leaves, dead trees, all live trees less than 10 feet high, and other combustible materials.

R614-4-8. Protective Clothing and Equipment.

A. Management shall assure that appropriate protective clothing, eye and face protection equipment, and respiratory protection equipment, where necessary to protect the safety and health of employees, shall be used and employees trained in their use.

B. When required by exposure, a shower bath shall be taken at the end of each shift.

C. Shoes shall be cleaned before entering or leaving explosive materials buildings.

D. Contaminated work clothing and shoes shall not be worn off the plant site.

E. Employees who work upon conductive flooring, conductive mats, or conductive runners where explosive materials or flammable vapors are present must wear non-sparking conductive footwear and the conductivity shall be assured. Personnel from other departments or visitors who enter these areas shall also comply (See ANSI/UL 467-1972 Grounds and Grounding and ANSI Z41.3-1976 Conductive Safety-Toe Footwear).

F. Under no circumstances will personnel working on electrical equipment or facilities wear conductive-soled safety shoes or other conductive footwear.

G. Operational safety showers and eye wash facilities, clearly identified, shall be provided in case of contact with corrosives. All personnel employed in corrosive areas shall know the location of safety showers and eye wash facilities and be trained in their use.

R614-4-9. Intra Plant Transportation.

A. When moving explosive materials, the material shall be in acceptable containers, and covered when necessary.

B. Only authorized employees shall operate motorized equipment.

C. Vehicles used for the transportation of explosives shall be of a design to safely handle the material being moved.

R614-4-10. Explosive Materials Ingredient Preparation Operations.

A. When explosive material ingredients are susceptible to ignition by static electricity, shock, friction, spontaneous combustion, or incompatibility, adequate precaution shall be taken.

B. Blending or mixing equipment shall be of a construction suitable for the hazards of the materials being handled or processed.

C. Drive equipment for explosive material blenders, mixers, presses (hydraulic), screeners (mechanical), and other equipment shall be so designed that drive motors and pumps are located outside of the operating room in a dust-free and vapor-free atmosphere.

D. When materials are dried, the safe temperature for drying shall be established and then not exceeded at any point in the dryer apparatus or drying operation.

E. Containers used for handling oxidizers such as sodium nitrate and ammonium nitrate shall be examined for foreign material before use.

F. When necessary, screening of raw materials shall be supplemented by a permanent type magnetic separator.

G. Sulfur shall be handled so as to avoid friction and static electricity ignition.

H. Nitrocotton shall not be subjected to rough handling.

I. Extreme cleanliness shall be maintained in all nitrocotton operations. Any material that has escaped from its container shall be wet down immediately with water for proper disposal. Waste or dirty nitrocotton shall be properly disposed of.

J. Hoops and nuts on nitrocotton barrels or containers shall be wet with water or oil prior to removing them and prior to placing them back on the containers.

K. Nitrocotton shall be stored in closed containers.

L. Frozen nitrocotton shall be thawed before removing from drums.

M. Nitrocotton shall be screened before use; screens shall be of non-sparking material and grounded.

N. Nitrocotton containing less than 25% moisture shall not be screened.

O. Partially filled drums of nitrocotton or similar materials shall be closed to prevent evaporation of moisture.

P. Empty drums shall be thoroughly cleaned of nitrocotton, inside and out.

R614-4-11. Maintenance and Repairs.

A. Repairs to explosive material, machinery or buildings shall not be made without prescribed cleanup, decontamination and approval by authorized supervisory personnel.

B. All new or newly repaired process equipment used in explosive material operations shall be examined and test operated before being placed into routine operation.

C. All tools used for lubrication, repairs or adjustment of explosive material equipment shall be removed from the building or returned to their proper location before routine operations are started or resumed.

D. Refueling shall comply with 29 CFR 1910.106.

R614-4-12. Storage of Explosive Material.

A. Explosives and related materials shall be stored in approved facilities required under the applicable provisions of 27 CFR 55 Commerce in Explosives, and/or the applicable provisions of the U.S. Department of Defense Regulations.

B. All explosive materials shall be stored in an approved magazine or area unless they are in process, being used or being loaded or unloaded into or from transportation vehicles or while in the course of transportation.

R614-4-13. Transportation of Explosive Material.

Transportation of explosives shall meet all the provisions of the U.S. Department of Transportation and/or Utah Department of Transportation.

R614-4-14. Blasting Agents.

A. General. Unless otherwise set forth in this rule, blasting agents, excluding slurry, water gels, and emulsions, shall be manufactured, transported, stored, and used in accordance with these regulations. Slurry, water gels, and emulsion are covered in R614-4.

B. Fixed Location Mixing.

1. Buildings or other facilities used for the mixing of blasting agents shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated (See R614-4-5.C.)

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. All internal-combustion engines, such as diesel or gasoline-powered generators, shall be located outside the mixing building, or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark arrester mufflers, or be remotely located, so that any spark emission will not be a hazard to any materials in or adjacent to the building.

C. Equipment used for mixing blasting agents shall conform to the requirements of this subdivision.

1. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, accumulation of dust, and confinement. All bearings and drive assemblies shall be mounted outside the mixer. All surfaces shall be accessible for cleaning. All hollow shafts shall be constructed to permit venting with an opening of at least 1/2 inch diameter.

2. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

3. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling and inspection.

4. All electrical equipment, including wiring, switches, controls, motors and lights which is located inside the mixing room shall conform to the requirements of 29 CFR 1910 Subpart S for Class II, Division 2 locations.

5. Mixing and packaging equipment shall be constructed of materials compatible with the materials being handled.

6. Suitable means shall be provided to prevent the flow of fuel to the mixer in case of fire. In gravity flow systems, an automatic spring-loaded shut-off valve with fusible link shall be installed.

D. The provisions of this subdivision shall be considered when determining blasting agent compositions.

1. The sensitivity of the blasting agent shall be determined by means of a No. 8 test blasting cap at regular intervals and after every change in formulations.

2. Oxidizers of small particle size, such as crushed ammonium nitrate prills or fines, may be more sensitive than coarser products and shall, therefore, be handled with greater care.

3. No hydrocarbon liquid fuel with flashpoint lower than that of no. 2 diesel fuel oil 125 degrees F. minimum shall be used.

4. Crude oil and crankcase oil shall not be used.

5. Metal powders such as aluminum shall be kept dry and shall be stored on containers or bins which are moisture-resistant or weather-tight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

6. Peroxides and chlorates shall not be used.

E. Mixing Operations

1. Safety precautions at mixing plants shall include the requirements of this subdivision.

2. The mixing, loading, and ingredient transfer areas where residues or spilled materials may accumulate shall be cleaned periodically. A cleaning and collection system for dangerous residues shall be provided.

3. A daily visual inspection shall be made of the mixing, conveying and electrical equipment to determine that such equipment is in safe operating condition. All discrepancies shall be corrected prior to operation. A program of systematic maintenance shall be conducted on a regular schedule.

4. The entire mixing and packaging plant shall be cleaned regularly and thoroughly to prevent excessive accumulation of dust, grease, and product ingredients.

5. Empty ingredient bags shall be disposed of daily in a safe manner.

6. No welding shall be permitted nor open flames allowed in or around the mixing or storage area of the plant, unless the equipment and area have been completely washed down and all fuels and oxidizing material removed.

7. Before welding or making repairs to hollow shafts, all fuels and oxidizing material shall be removed from the outside and inside of the shaft by a thorough washing, and the shaft shall be vented.

8. Other explosive material shall not be stored inside of or within 50 feet of any building or facility used for the mixing of blasting agents.

F. Bulk delivery and mixing vehicles.

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. A bulk vehicle body for delivering and mixing blasting agents shall conform with the requirements of this subdivision.

a. The body shall be constructed of noncombustible materials.

b. Vehicles used to transport bulk premixing blasting agents on public highways shall have closed bodies.

c. All moving parts of the mixing system shall be designed as to prevent a heat buildup. Shafts or axles which contact the product shall have outboard bearings with 1-inch minimum clearance between the bearings and the outside of the product container. Particular attention shall be given to the clearances on all moving parts.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in safe mechanical condition.

e. When electric power is supplied by a self-contained motor generator located on the vehicle, the motor generator shall be separated from the blasting agent discharge.

f. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

3. Operation of bulk delivery vehicles shall conform to the requirements of this subdivision. These include the placarding requirements as specified by the Department of Transportation.

a. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. The employer shall assure that the operator is familiar with the commodities being delivered and the general procedure for handling emergency situations.

b. The operator shall be familiar with applicable local, state, and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

c. No person shall smoke, carry matches or any flame producing device, or carry any fire-arms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of blasting agents at or near the blasting site.

d. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure that the driver, in moving the vehicle, has assistance of a second person to guide his movements.

e. No in transit mixing of materials shall be performed.

4. Pneumatic loading from bulk delivery vehicles into blast holes primed with electric blasting caps or other static-sensitive systems shall conform to the requirements of the subdivision.

a. A positive grounding device shall be used to prevent the accumulation of static electricity.

b. A discharge hose shall be used that has a resistance range that will prevent conducting stray currents, but that is conductive enough to bleed off static buildup.

c. A qualified person shall evaluate all systems to determine if they will adequately dissipate static under potential field conditions.

5. Repairs to bulk delivery vehicles shall conform to the requirements of this Part.

a. No welding or open flames shall be used on or around any part of the delivery equipment unless it has been completely washed down and all oxidizer material removed.

b. Before welding or making repairs to hollow shafts, the shaft shall be thoroughly cleaned inside and out and vented with a minimum one-half inch diameter opening.

G. Bulk Storage Bins

1. The bin, including supports, shall be constructed of compatible materials, waterproof, and adequately supported and braced to withstand the combination of all loads including impact forces arising from product movement within the bin and accidental vehicle contact with the support legs.

2. The bin discharge gate shall be designed to provide a closure tight enough to prevent leakage of the stored product. Provision shall also be made so that the gate can be locked.

3. Bin loading manways or access hatches shall be hinged or otherwise attached to the bin and designed to permit locking.

4. Any electrically driven conveyors for loading or unloading bins shall conform to the requirements of 29 CFR 1910 Subpart S. They shall be designed to minimize damage from corrosion.

5. Bins containing blasting agent shall be located, with respect to inhabited buildings, passenger railroads, and public highways, in accordance with American Table of Distances and separation from other blasting agent storage and explosives storage shall be in conformity with NFPA 492.

6. Bins containing ammonium nitrate shall be separate from blasting agent storage and explosives storage in conformity with NFPA 492.

H. Storage of Blasting Agents shall conform with the requirements of R614-4-12.

I. Transportation of Blasting Agents shall conform with the requirements of R614-4-13.

R614-4-15. Slurry, Water Gel and Emulsions.

A. General Provisions. Unless otherwise set forth in this rule, slurry, water gels, and emulsions shall be manufactured, transported, stored and used in the same manner as explosives or blasting agents in accordance with these regulations.

B. Types and classification.

1. Slurry, water gels, and emulsions which are cap-sensitive as defined in R614-4-2.B. under Blasting Agent shall be classified as an explosive and manufactured, transported, stored, and used as specified for "explosives" in this rule.

2. Slurry, water gels, and emulsions which are not cap-sensitive as defined in R614-4-2.B.of this section under Blasting Agent shall be classified as blasting agents and manufactured, transported, stored, and used as specified for "blasting agents" in this rule.

3. When tests on specific formulations of slurry, water gels, and emulsions result in Department of Transportation classification as a Class B explosive, bullet-resistant magazines are not required. See R614-4-12.

C. Fixed Location Mixing

1. Buildings or other facilities used for the mixing of slurrys, water gels and emulsions shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated.

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. Internal-combustion engines, such as diesel or gasoline-powered generators, when the hazard exists, shall be located outside the mixing building or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark-arrester mufflers, or be remotely located, so that any spark emission will not be a

hazard to any materials in or adjacent to the building.

D. Ingredients of Slurry, Water Gels and Emulsions.

1. Ingredients of slurrys, water gels, and emulsions shall conform to the requirements of this subdivision.

2. Ingredients in themselves classified as Class A or Class B Explosives shall be stored in conformity with R614-4-15 of this rule.

3. Nitrate-water solutions may be stored in tank cars, tank trucks, or fixed tanks without quantity or distance limitations. Spills or leaks which may contaminate combustible materials shall be cleaned up immediately.

4. Metal powders such as aluminum shall be kept dry and shall be stored in containers or bins which are moisture-resistant or weathertight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

5. Ingredients shall not be stored with incompatible materials.

6. Peroxides and chlorates shall not be used.

E. Mixing Equipment

1. Mixing equipment shall comply with the requirements of this subdivision.

2. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, and confinement.

3. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

4. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling, and inspection.

5. All electrical equipment including wiring, switches, controls, motors and lights, shall conform to the requirements of 29 CFR 1910 Subpart S.

F. Bulk delivery and mixing vehicles

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. The design of vehicles shall comply with the requirements of this subdivision.

a. Vehicles used over public highways for the bulk transportation of water gels or of ingredients classified as dangerous commodities, shall meet the requirements of the Department of Transportation and shall meet the requirements of this Part.

b. When electric power is supplied by a self-contained motor generator located on the vehicle the generator shall be at a point separated from where the water gel is discharged.

c. The design of processing equipment and general requirements shall conform to the requirements of this Chapter.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in good mechanical condition.

e. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

G. Operation of bulk delivery and mixing vehicles shall comply with the requirements of this subdivision.

1. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. He shall be familiar with the commodities being delivered and the general procedure for handling emergency situations.

2. The operator shall be familiar with applicable local, state and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

3. No person shall be allowed to smoke, carry matches or any flame-producing devices, or carry any firearms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of slurry, water gels, and emulsions, at or near the blasting site.

4. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure the driver the assistance of a second person to guide the driver's movements.

5. No in transit mixing of materials shall be performed.

6. The location chosen for slurry, water gel, and emulsions or ingredient transfer from a support vehicle into the borehole loading vehicle shall be away from the blasting hole site when the boreholes are loaded or in the process of being loaded.

R614-4-16. Small Arms Ammunition, Small Arms Primers, and Small Arms Propellants.

A. Scope - This rule does not apply to in-process storage and intraplant transportation during manufacture of small arms ammunition, small arms primers and smokeless propellants.

B. Small Arms Ammunition

1. No quantity limitations are imposed on the storage of small arms ammunition in warehouses, retail stores, and other general occupancy facilities except those imposed by limitations of storage facilities.

2. Small arms ammunition shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and from oxidizing materials, by a fire-resistive wall of 1 hour rating or by a distance of 25 feet.

3. Small arms ammunition shall not be stored together with Class A or Class B explosives unless the storage facility is adequate for this latter storage.

C. Smokeless Propellants

1. All smokeless propellants shall be stored in shipping containers specified in 27 CFR 55 Commerce in Explosives for smokeless propellants.

2. Commercial stocks of smokeless propellants over 20 pounds and not more than 100 pounds shall be stored in portable wooden boxes having wall of at least 1 inch nominal thickness.

3. Commercial stocks in quantities not to exceed 750 pounds shall be stored in nonportable storage cabinets having wooden walls of at least 1 inch nominal thickness. Not more than 400 pounds shall be permitted in any one cabinet.

4. Quantities in excess of 750 pounds shall be stored in magazines in accordance with R614-4-12.

D. Small Arms Ammunition Primers

1. Small arms ammunition primers shall not be stored except in the original shipping container in accordance with the requirements of Department of Transportation for small arms ammunition primers.

2. Small arms ammunition primers shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and oxidizing materials by a fire-resistive wall of 1-hour rating or by a distance of 25 feet.

3. Not more than 750,000 small arms ammunition primers shall be stored in any one building, except as provided in R614-4-16.D.4. Not more than 100,000 shall be stored in any one pile. Piles shall be at least 15 feet apart.

4. Quantities of small arms ammunition primers in excess of 750,000 shall be stored in magazines in accordance with R614-4-12.

R614-4-17. Fireworks.

Scope - This rule applies to the manufacture of Class B and C fireworks.

A. All fireworks manufacturing shall comply with the requirements of this rule and the applicable portions of R614-4.

1. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted at one time in any mixing building or any building in which pyrotechnic and explosive compositions are pressed or otherwise prepared for finishing and assembling.

2. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted in a finishing and assembling building at one time.

3. In no case shall oxidizers such as nitrates, chlorates, or perchlorates be stored in the same building with combustible powdered materials such as charcoal, guns, metals, sulfur, or antimony sulfide.

B. Separation Distances.

1. All process buildings shall be separated from inhabited buildings, public highways and passenger railways in accordance with American Table of distance.

2. The separation distance between process buildings shall be in accordance with American Table of Distances.

3. Separation distances of nonprocess buildings from process buildings and magazines shall be in accordance with American Table of Distances.

4. Separation of magazines containing black powder or salutes classified as Class B fireworks from inhabited buildings, highways, and other magazines containing black powder or salutes classified as Class B fireworks shall be in accordance with American Table of Distances.

C. Building Construction

1. The exterior of process buildings constructed after this Code is adopted shall be constructed of materials no more combustible than painted wood.

2. No buildings shall have a basement. Interior wall surfaces and ceilings of buildings shall be smooth, free from cracks and crevices, noncombustible, and with a minimum of horizontal ledges upon which dust may accumulate. Wall joints and openings for wiring and plumbing shall be sealed to prevent entry of dust. Floors and work surfaces shall not have cracks or crevices in which explosives or pyrotechnic compositions may lodge.

3. Mixing, screening, pressing and assembly buildings or areas shall have conductive flooring, properly grounded.

R614-4-18. Use of Explosives and Blasting Agents.

A. General Provision

1. While explosives are being handled or used, smoking shall not be permitted and no one near the explosives shall possess matches,open light or other fire or flame except for ignition purposes. No person shall be allowed to handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.

2. Original containers or approved magazines shall be used for taking detonators and other explosives from storage magazines to the blasting area.

3. When blasting is done in congested areas or in close proximity to a structure, or any other installation that may be damaged, the blast shall be covered before firing with a mat constructed so that it is capable of preventing fragments from being thrown.

4. Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution including but not limited to warning signals, flags, barricades, or woven wire mats to insure the safety of all employees.

5. Surface blasting operations, except during unusual conditions shall be conducted during daylight hours.

a. Unusual blasting operations associated with industrial processes that are performed inside buildings shall be permitted, regardless of time of day, if both of the following conditions are met:

(1) All requirements concerning the use of explosives during normal blasting operations are implemented; and

(2) A minimum illumination intensity of 20 foot-candles is provided within a 5-foot (1.52m) radius of where explosive charges are being assembled, where explosive charges are being placed, and where explosive materials are being attached to initiating devices.

6. Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, and steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice.

7. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines, dust storms, or other sources of extraneous electricity. These precautions shall include:

a. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm; and

b. The posting of signs warning against the use of mobile radio transmitters. (See ANSI C-95.4 and Institute of Makers of Explosive Safety Library Publication #20.)

8. Warning signs, indicating a blast area, shall be maintained at all approaches to the blast area. The warning sign lettering shall not be less than 4 inches in height on a contrasting background.

9. The blaster shall keep an accurate, up-to-date record of explosives, explosive materials, blasting agents, and blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

10. No activity of any nature other than that which is required for drilling or for loading holes with explosive material shall be permitted in a blast area.

11. Empty boxes and paper and fiber packing materials which have previously contained explosive material shall not be used again for any purpose, but shall be destroyed by burning at an approved isolated location out of doors, and no person shall be nearer than 100 feet after the burning has started.

12. Containers of explosives shall not be left open in any magazine or within 50 feet of any magazine. In opening kegs or wooden cases, no sparking metal tools shall be used; wooden wedges and either wood, fiber or rubber mallets shall be used. Nonsparking metallic slitters may be used for opening fiberboard cases.

13. Explosives or blasting equipment that are deteriorated or damaged shall not be used.

14. No explosives shall be abandoned.

B. Blaster Qualifications.

1. A blaster shall be able to understand and give written and oral orders.

2. A blaster shall be qualified by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives material and have a working knowledge of State and local laws and regulations which pertain to explosives material.

3. Blasters shall be required to furnish satisfactory evidence of competency in handling explosives material and performing in a safe manner the type of blasting that will be required.

4. The blaster shall be knowledgeable and competent in the use of each type of blasting method used.

C. Loading of Explosive Materials.

1. Procedures that permit safe loading shall be established and followed.

2. All drill holes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.

3. Tamping shall be done only with wood rods or plastic

tamping poles without exposed metal parts, but nonsparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.

4. When loading blasting agents over electric blasting caps, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.

5. No holes shall be loaded except those to be fired in the next round of blasting.

6. No loaded holes shall be left unattended or unprotected.

7. Drilling shall not be started until all remaining butts of old holes are examined for unexploded charges, and if any are found, they shall be refired before work proceeds.

8. No employee shall be allowed to deepen drill holes which have contained explosives.

9. After loading for a blast is completed, all excess blasting caps or electric blasting caps and other explosives shall immediately be returned to their separate storage magazines.

D. Initiation of Explosive Charges - Electric Blasting.

1. Electric blasting caps shall not be used where sources of extraneous electricity make the use of electric blasting caps dangerous. Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

2. Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

3. In any single blast using electric blasting caps, all caps shall be electrically compatible.

4. Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric blasting cap manufacturer's recommendations.

5. When firing a circuit of electric blasting caps, care must be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendations.

6. Connecting wires and lead wires shall be insulated single solid wires of sufficient current-carrying capacity.

7. Buss wires shall be solid single wires of sufficient current-carrying capacity.

8. When firing electrically, the insulation on all firing lines shall be adequate in good condition.

9. A power circuit used for firing electric blasting caps shall not be grounded.

10. In underground operations when firing from a power circuit, a safety switch shall be placed in the permanent firing line at intervals. This switch shall be made so it can be locked only in the "off" position and shall be provided with a short-circuiting arrangement of the firing lines to the cap circuit.

11. In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.

12. When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the "off" position. Keys to this switch shall be entrusted only to the blaster.

13. Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

14. When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric blasting caps used.

15. The number of electric blasting caps connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, in primary blasting, a series circuit shall contain no more caps than the limits recommended by the manufacturer of the electric blasting caps in use.

16. The blaster shall be in charge of the blasting machines and no other person shall connect the leading wires to the machines.

17. Blasters, when testing initiating circuits, or electric caps, shall use only blasting galvanometers or other instruments which have been designed and approved for this purpose.

18. Whenever the possibility exists that a leading line of blasting wire might be thrown over a live powerline by the force of an explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.

19. In electrical firing, only the employee making leading wire connections shall fire the shot. All connections shall be made from the bore hole back to the source of firing current, and the leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

20. After firing an electric blast from a blasting machine the leading wires shall be immediately disconnected from the machine and short-circuited.

E. Use of Safety Fuse.

1. Safety fuse shall only be used where sources of extraneous electricity make the use of electric blasting caps dangerous. The use of a fuse that has been damaged in any way shall be forbidden.

2. The hanging of a fuse on nails or other projections which will cause a sharp end to be formed in the fuse is prohibited.

3. Before capping safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each blasting cap.

4. Only a cap crimper of approved design shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.

5. No unused cap or short capped fuse shall be placed in any hole to be blasted; such detonators shall be removed from the working place and destroyed.

6. No fuse shall be capped, or primers made up, in any magazine or near any possible source of ignition.

7. No employees shall be permitted to carry detonators or store detonators or primers of any kind in their clothing.

8. The minimum length of safety fuse to be used in blasting shall not be less than 36 inches or a burning time of 120 seconds.

9. At least two employees shall be present when multiple cap and fuse blasting is done by hand lighting methods.

10. Not more than 12 fuses shall be lighted by each blaster when hand lighting devices are used. However, when two or more safety fuses in a group are lighted as one by means of igniter cord, or other similar fuse lighting devices, they may be considered as one fuse.

11. The method of dropping or pushing a primer or any explosive with a lighted fuse attached is forbidden.

12. Cap and fuse shall not be used for firing mudcap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.

13. When blasting with safety fuses, consideration shall be given to the length and burning rate of the fuse. Sufficient time, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

F. Use of Detonating Cord.

1. Care shall be taken to select a detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives used.

2. Detonating cord shall be handled and used with the same respect and care given other explosives.

3. The line of detonating cord extending out of a bore hole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.

4. Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking up.

5. Detonating cord connections shall be complete and positive in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

6. All detonating cord trunklines and branchlines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.

7. All detonating cord connections shall be inspected before firing the blast.

8. When detonating cord millisecond-delay connectors or short-interval delay electric blasting caps are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.

9. When connecting a blasting cap or an electric blasting cap to detonating cord, the cap shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the cap containing the explosive charge pointed in the direction in which the detonation is to proceed.

10. Detonators for firing the trunkline shall not be brought to the loading areas nor attached to the detonating cord until everything else is in readiness for the blast.

G. Firing the Blast.

1. Before a blast is fired, a warning signal shall be given by the blaster in charge, who has made certain that all surplus explosives are in safe place and all employees, vehicles, and equipment are at a safe distance, or under sufficient cover.

2. Before firing any blast, warning shall be given, and all possible entries into the blasting area, shall be carefully guarded. The blaster shall make sure that all employees are out of the blast area before firing a blast.

H. Inspection After Blasting.

1. Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine, or where power switches are used, they shall be locked open or in the off position.

2. Sufficient time shall be allowed for the smoke and fumes to leave the blast area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation. Any unexploded explosives shall be disposed of safely.

I. Misfires.

1. If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone.

2. No other work shall be done except that necessary to remove the hazard of misfire and only those employees necessary to do the work shall remain in the danger zone.

3. No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole refired. If refiring of the misfired hole presents a hazard, the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.

4. If there are any misfires while using cap and fuse, all employees shall be required to remain away from the charge for at least 1 hour. If electric blasting caps are used and a misfire occurs, this waiting period may be reduced to 30 minutes. Misfires shall be handled under the direction of the blaster in charge of the blasting and all wires shall be carefully traced and search made for unexploded charges.

5. No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved the work can proceed.

J. Underwater Blasting.

1. Loading tubes and casings of dissimilar metals shall not be used because of possible electric transient currents from galvanic action of the metals and water.

2. Only water-resistant blasting caps and detonating cords shall be used for all marine blasting. Loading shall be done through a non-sparking metal loading tube when tube is necessary.

3. No blast shall be fired while any vessel under way is closer than 1,500 feet to the blasting area. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired.

4. No blast shall be fired while any swimming or diving operations are in progress in the vicinity of the blasting area. If such operations are in progress, signals and arrangements shall be agreed upon to assure that no blast shall be fired while any person is in the water.

5. Blasting flags shall be displayed.

6. The storage and handling of explosives aboard vessels used in underwater blasting operations shall be according to provisions outlined herein on handling and storing explosives.

7. When more than one charge is placed under water, a float device shall be attached to an element of each charge in such a manner that it will be released by the firing. Misfires shall be handled in accordance with the requirements of R614-4-18.I.

R614-4-19. Product Testing.

A. Every program for testing of explosive materials shall be examined by the employer for all foreseeable hazards involved in the test. When a specific hazard can be foreseen which affects safety, alternate means for attaining the objectives of the test shall be adopted.

B. No test shall be conducted unless safe testing facilities are available. The employer shall determine the adequacy of available facilities and the need for additional safeguards prior to beginning tests.

C. The test crew shall consist of at least two members during tests: one member of the crew shall serve as safety observer and shall be stationed at a safe location so as to summon help and offer aid in an emergency.

D. The quantity of explosive material taken to a test site shall not exceed that required to conduct the test safely.

E. It shall be the responsibility of the person in charge of the test to take the necessary action to protect by location or distance, personnel that may be endangered by the test.

F. If a test item fails to function (explode) no attempt shall be made to determine the nature of the malfunction until sufficient time has elapsed to assure that the test item is not reacting. The test item shall be handled cautiously, preferably by remote control and disposed of as soon as possible. Care shall be taken to avoid inhaling the reaction products of test compositions.

R614-4-20. Storage of Ammonium Nitrate.

A. Storage

1. Except as provided in R614-4-12. this rule applies to the storage of ammonium nitrate in the form of crystals, flakes, grains, or prills, including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures containing 60 percent or more ammonium nitrate by weight but does not apply to blasting agents.

2. This rule does not apply to the transportation of ammonium nitrate.

3. The storage of ammonium nitrate and ammonium nitrate mixtures that are more sensitive than allowed by the "Definition of Test Procedures for Ammonium Nitrate Fertilizer" (available from the Fertilizer Institute, 1015 18th Street, N.W.,

Washington, D.C. 20036) is prohibited.

4. Nothing in this rule shall apply to the production of ammonium nitrate or to the storage of ammonium nitrate on the premise of the producing plant.

5. The standards for ammonium nitrate (nitrous oxide grade) are those found in the "Specifications, Properties, and Recommendations for Packaging, Transportation, Storage, and Use of Ammonium Nitrate", Available from the Compressed Gas Association, Inc., 500 Fifth Avenue, New York, New York 10036.

B. General.

1. This rule applies to all persons storing, having, or keeping ammonium nitrate, and to the owner or lessee of any building, premises, or structure in which ammonium nitrate is stored in quantities of 1,000 pounds or more.

2. Approval of large quantity storage shall be subject to due consideration of the fire and explosion hazards, including exposure to toxic vapors from burning or decomposing nitrate.

C. Storage Buildings.

1. Storage buildings shall not have basements unless the basements are open on at least one side. Storage buildings shall not be over one story in height.

2. Storage buildings shall have adequate ventilation, or be of a construction that will be self-ventilating in the event of fire.

3. The wall on the exposed side of a storage building within 50 feet of a combustible building, forest, piles of combustible materials and similar exposure hazards shall be of fire-resistive construction. In lieu of the fire-resistive wall, other suitable means of exposure protection such as a free standing wall may be used. The roof coverings shall be Class C or better, as defined in the Manual on Roof Coverings, NFPA 203M-1970 or latest edition thereof.

4. All flooring in storage and handling areas shall be of noncombustible materials or protected against impregnation by ammonium nitrate and shall be without open drains, traps, tunnels, pits or pockets into which any molten ammonium nitrate could flow and be confined in the event of fire.

5. The continued use of an existing storage building or structure not in strict conformity with this Rule may be approved in cases where such continued use will not constitute a hazard to life.

6. Buildings and structures shall be dry and free from water seepage through the roof, walls, and floors.

D. Storage of Ammonium Nitrate in Bags, Drums, or Other Containers.

1. Bags and Containers

a. Bags and containers used for ammonium nitrate must comply with specifications and standards required for use in interstate commerce.

b. Containers used on the premises in the actual manufacturing or processing need not comply with provisions of R614-4-20.D.1.a.

2. Storage

a. Containers of ammonium nitrate shall not be accepted for storage when the temperature of the ammonium nitrate exceeds 130 degrees F.

b. Bags of ammonium nitrate shall not be stored within 30 inches of the storage building walls and partitions.

c. The height of piles shall not exceed 20 feet. The width of piles shall not exceed 20 feet and the length 50 feet except that where the building is of noncombustible construction or is protected by automatic sprinklers the length of piles shall not be limited. In no case shall the ammonium nitrate be stacked closer than 36 inches below the roof or supporting and spreader beams over head.

d. Aisles shall be provided to separate piles by a clear space of not less than 3 feet in width. At least one service or main aisle in the storage area shall not be less than 4 feet in width.

E. Storage of Bulk Ammonium Nitrate.

1. Warehouses shall have adequate ventilation or be capable of adequate ventilation in case of fire.

2. Unless constructed of noncombustible material or unless adequate facilities for fighting a roof fire are available, bulk storage structures shall not exceed a height of 40 feet.

F. Bins

1. Bins shall be clean and free of materials which may contaminate ammonium nitrate.

2. Due to the corrosive and reactive properties of ammonium nitrate, and to avoid contamination, galvanized iron, copper, lead, and zinc shall not be used in a bin constructed unless suitably protected. Aluminum bins and wooden bins protected against impregnation by ammonium nitrate are permissible. The partitions dividing the ammonium nitrate storage from other products which would contaminate the ammonium nitrate shall be of tight construction.

3. The ammonium nitrate storage bins or piles shall be clearly identified by signs reading "Ammonium Nitrate" with letters at least 2 inches high.

G. General.

1. Piles or bins shall be so sized and arranged that all material in the pile is moved out periodically in order to minimize possible caking of the stored ammonium nitrate.

2. Height or depth of piles shall be limited by the pressure-setting tendency of the product. However, in no case shall ammonium nitrate be piled higher at any point than 36 inches below the roof or supporting and spreader beams over head.

3. Ammonium nitrate shall not be accepted for storage when the temperature of the product exceed 130 degrees F.

4. Dynamite, other explosives, and blasting agents shall not be used to break up or loosen caked ammonium nitrate.

H. Contaminants.

1. Ammonium nitrate shall be in a separate building or shall be separated by approved type fire-walls of not less than 1 hour fire-resistance rating from storage of organic chemicals, acids, or other corrosive materials, materials that may require blasting during processing or handling, compressed flammable and combustible materials or other contaminating substances, including but not limited to animal fats, baled cotton, baled rags, baled scrap paper, bleaching powder, burlap or cotton bags, caustic soda, coal, coke, charcoal, cork, camphor, excelsior, fibers of any kind, fish oils, fish meal, foam rubber, hay, lubricating oil, linseed oil, or other oxidizable or drying oils, naphthalene, oakum, oiled clothing, oiled paper, oiled textiles, paint straw, sawdust, wood shavings, or vegetable oils. Walls referred to in this subdivision need extend only to the underside of the roof.

2. In lieu of separation walls, ammonium nitrate may be separated from the materials referred to in R614-4-20.H.1. by a space of at least 30 feet.

3. Flammable liquids such as gasoline, kerosene, solvents, and light fuel oils shall not be stored on the premises except when such storage conforms to R614-4-1, and when walls and sills or curbs are provided in accordance with R614-4-20.H.1. or 2.

4. LP-gas shall not be stored on the premises except when such storage conforms to 29 CFR 1910.110.

I. Storage.

1. Sulfur and finely divided metals shall not be stored in the same building with ammonium nitrate except when such storage conforms to R614-4-1. through 20.

2. Explosives and blasting agents shall not be stored in the same building with ammonium nitrate except on the premises of makers, distributors, and user-compounders of explosives or blasting agents.

3. Where explosives or blasting agents are stored in separate buildings, other than on the premises of makers, distributors, and user-compounders of explosives or blasting

agents, they shall be separated from the ammonium nitrate by the distances and/or barricades specified in R614-4-21 but not less than 50 feet.

4. Storage and/or operations on the premises of makers, distributors and user-compounders of explosives or blasting agents shall be in conformity with R614-4-1. through 20. of these rules.

J. General Precautions.

1. Electrical

a. Electrical installations shall conform to the requirements of 29 CFR 1910 Subpart S, for ordinary locations. They shall be designed to minimize damage from corrosion.

b. In areas where lightning storms are prevalent, lightning protection shall be provided. (See the Lightning Protection Code, NFPA 78-1979).

c. Provisions shall be made to prevent unauthorized personnel from entering the ammonium nitrate storage area.

2. Fire Protection.

a. Not more than 2,500 tons of bagged ammonium nitrate shall be stored in a building or structure not equipped with an automatic sprinkler system. Sprinkler systems shall be approved type and installed in accordance with 29 CFR 1910.159.

b. Suitable fire control devices such as small hose or portable fire extinguishers shall be provided throughout the warehouse and in the loading and unloading area. Suitable fire control devices shall comply with the requirements of 29 CFR 1910.157 and 1910.158.

c. Water supplies and fire hydrants shall be available in accordance with recognized good practices.

R614-4-21. Sources of Standards.

The following sources and publications were used in the Development of R614-4.

A. Institute of Makers of Explosives Safety Library Publications, 1575 Eye Street, N.W., Suite 550, Washington, D.C. 20005.

B. The American Table of Distances

C. Suggested Code of Regulations for the Manufacture, Transportation, Storage, Sale, Possession, and Use of Explosive Materials.

D. "Do's and Don'ts" Instructions and Warnings

E. Glossary of Industry Terms

F. Safety in the Transportation, Storage, Handling and Use of Explosives.

G. Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps.

H. IME Standard for the Safe Transportation of Class C Detonators (Blasting Caps) in a Vehicle with Certain Other Explosives.

I. Department of Defense Standards.

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

1. DOD 5154.4S DOD Ammunition and Explosives Safety Standards

2. AMCP 706-186 Engineering Design Handbook, Military Pyrotechnics Series, Part Two--Safety, Procedures and Glossary

3. DOD 4145.26M DOD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Material

J. National Fire Protection Association Codes, 470 Atlantic Avenue, Boston MA 02210.

1. NFPA 44a-1974 Code for the Manufacture, Transportation, and Storage of Fireworks

2. NFPA 495-1973 Code for the Manufacture, Transportation, Storage and Use of Explosive Materials

3. NFPA 492-1976 Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents

4. NFPA 203M-1970 Manual on Roof Coverings

5. NFPA 78-1979 Lightning Protection Code

6. NFPA 490-1975 Storage of Ammonium Nitrate

7. NFPA 91-1973 Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying

K. Code of Federal Regulations Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

1. CFR 14 Aeronautics and Space

2. CFR 27 Alcohol, Tobacco Products, and Firearms

3. CFR 29 Labor

4. CFR 30 Mineral Resources

5. CFR 46 Shipping

6. CFR 49 Transportation

L. National Institute for Occupational Safety and Health Reports available from: U.S. Department of Commerce, National Technical; Information Service, Springfield, VA 22161.

1. PB 297 827 A Safe Practices Manual for the Manufacturing, Transportation, Storage and Use of Explosives

2. PB 297 807 A Safe Practices Manual for the Manufacturing, Transportation, Storage, and Use of Pyrotechnics

KEY: safety
December 2, 1997 34A-6-202
Notice of Continuation November 2, 2007

R614. Labor Commission, Occupational Safety and Health.
R614-5. Materials Handling and Storage.
R614-5-1. Crawler Locomotive and Truck Cranes.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two-blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

R614-5-2. Conveyors.

This rule is to cover minimum standards for the safe installation, operation and maintenance of all types of conveying machinery and equipment, which includes belt, bucket, chain, roller, reciprocating or oscillating, screw, pneumatic, and flight conveyors or conveying systems. In the event these orders do not cover a specific hazardous condition, the ANSI standard B-20.1, 1996 shall be used as a guide.

A. Guarding.

1. Driving mechanisms of conveying equipment shall be enclosed by housing or guards where it is possible for workers to come in contact with gears, chain or belt drives or moving shafts. The guards shall be constructed so no part of the body or clothing can contact the driving mechanism.

2. Head pulleys, tail pulleys, take up, counterweights, sprockets, sheaves, drums, blocks, etc., shall be enclosed with guards or the area blocked off with rails or fence so workers cannot come in contact with moving parts.

3. Bucket elevators shall be enclosed in a housing or the area blocked off so no hazard exists from falling material.

4. Screw conveyors, troughs, or box openings shall have covers, grating or guard rails to prevent workers from coming in contact with the moving conveyor.

5. Conveyors passing over work areas, aisles or walkways where workers are exposed shall be covered underneath to eliminate hazard from falling material or personal contact.

6. Openings to hoppers, chutes or other discharge points where workers may be exposed shall be guarded by railings, toeboards, baffleplates, chains, temporary covers and front and sides high enough to prevent workers falling into them and material being discharged from striking them.

7. Platforms with side rails shall be constructed on trippers where a worker is required to ride or climb on the tripper to operate the controls so he cannot slip off or come in contact with the moving machinery. If a platform is not required, levers and controls shall be located so the worker can safely operate the tripper without coming in contact with the moving machinery.

B. Inspection and Maintenance.

1. Periodic inspection of the entire conveying mechanism shall be made for worn parts, defective couplings, loose belts, chains and defective safety devices such as brakes, backstops, overload releases, guards, etc.

2. Such inspection shall be made while the equipment is stopped and locked out except where the inspector can stand completely in the clear of any moving parts.

3. Lubrication of machine parts shall not be done while equipment is operating unless grease and oil fittings are equipped with extensions which permit such lubrication from a position where the worker cannot come in contact with the moving machinery.

C. Walkways, Platforms, Balconies

1. Where conveyors must be crossed over during operation, a walkway with stairs, platform, handrails and toeboards shall be constructed and conspicuously marked with a sign. Where walkways, ramps or stairways are located adjacent to open belt or pan conveyors, they shall be at least 20 inches in width and there shall be three feet clearance from the outside of the passageway and the moving conveyor. All stairways shall have handrails adjacent to the conveyor to prevent workers who may stumble from falling into the conveyor.

2. Where workers must cross under a conveyor, crossunders shall be plainly marked as the only passageways. The passageway shall be covered to prevent contact with moving parts or material falling off the conveyor.

D. Brakes and Backstops.

On conveyors where reversing or a runaway might occur under load in case of power failure, an anti-runaway or backstop device or automatic brake shall be provided or guard rails installed to prevent anyone from being in the area where the falling load could strike him.

E. Dust control.

1. Dust control equipment, provided at transfer points, crushers or such as sprays or exhaust hoods shall be wherever a dust condition exists which may be a health hazard to workers or a fire or explosion hazard.

2. Where the installation of dust control equipment is not practical, workers shall be provided with approved respiratory devices.

F. Fire Protection

1. Housekeeping along conveying systems shall be maintained in a manner that will prevent fires.

2. Where conveying equipment fire may present a hazard to workers or building, emergency fire fighting equipment shall be provided and identified and strategically located to control any outbreak of fire. Equipment selection should consider the control of electrical fires, burning belting and conveyor structures, materials being handled, adjacent materials, etc.

3. Workers operating conveying equipment shall be knowledgeable in the use of the fire protection equipment furnished.

4. Where conveying equipment is located in building or tunnel enclosures where men are working, emergency fire exits shall be provided and identified.

5. All fire fighting equipment, alarm stations, etc., must be identified and readily accessible and free of obstructions.

G. Illumination.

Sufficient lighting to see the equipment clearly shall be provided at floor level, head and tail pulleys, operating stations and along conveyor systems which must be inspected - 5 to 10-foot candles of light meet this requirement.

H. Electrical.

1. Power and control circuits for conveying equipment shall be installed so as to minimize the possibility of electric shock or fire hazard. This shall include grounding. After the effective date of these orders, new equipment shall be installed in accordance with the current edition of the National Electric Code.

2. Power and control circuits shall not be enclosed in the same conduit lines or junction boxes.

3. All starting and stopping devices shall be clearly marked and the immediate area kept clear of obstructions to permit ready access.

4. All conveyor switch boxes shall be identified indicating the voltage and the equipment served.

5. Electrical installations in explosive areas shall meet the requirements, as applicable, of the National Electrical Code, Chapter 500.

6. The installation of electrical emergency conveyor stops, such as pull cables, or push buttons, is recommended where workers are manually loading or unloading or doing cleanup work while equipment is operating.

7. Overload protective devices are recommended on conveying equipment power circuits to prevent damage or fire.

I. Safe Operating Rules.

1. Manually loaded vertical or highly inclined conveyors shall have a sign at the loading point designating the load

capacity.

2. No riding shall be permitted on any conveyor not specifically designed and approved to convey workers.

3. Repairs to conveyors or related equipment shall not be done while the equipment is operating. When stopped for repairs, servicing, cleaning, removing overloads, etc., the controls shall be locked or tagged out.

4. No safety device, guard, overload, cutout, brake, etc., shall be removed from a conveyor and the conveyor placed in operation without the device being reinstalled. Where permanent guards at hazardous points must be left off, the area shall be laced off with temporary boards, etc., if the conveyor is placed in operation other than for testing.

5. Workers working around or operating conveyors shall be advised of the location of the starting and stopping devices and instructed how to use them to stop the conveyor in an emergency.

KEY: safety
December 2, 1997 34A-6
Notice of Continuation November 2, 2007

R614. Labor Commission, Occupational Safety and Health.
R614-6. Other Operations.
R614-6-1. Crushing, Screening, and Grinding Equipment.

A. Car moving, dumping, and shakeout or cleanout operations shall be performed in a safe manner and in compliance with R614-6-4. Reloading shall be performed in a safe manner.

B. Track or truck hoppers or bins shall be covered with a grizzly, or other suitable means shall be provided to prevent an employee from accidentally falling into the bin, or the employee shall wear a safety harness properly tied off. This is also applicable when working around or over crushers or rolls.

C. Equipment feeding crushing, screening and grinding facilities shall be adequately guarded and maintained in a safe manner.

D. Air lines, bars, hammers, and all other tools used shall be kept in good repair at all times. Goggles or face shields shall be worn when lancing or barring down or when any other activity may result in flying particles.

E. Protective equipment such as hard hats, safety shoes, eye protection, respiratory protection, and gloves shall be worn when needed. Operators shall wear clothing as needed to reasonably cover the body. Such clothing shall be relatively close fitting so as to preclude loose, ragged sleeves or trouser legs, long coat tails, neckties and other such items as may become entangled in the machinery.

F. Machinery guards shall be kept in place and machinery shall not be operated following repairs until guards are in place and secured. Electrical gear shall have covers in place during operation.

G. No employees shall work on the drive mechanism, in a chute, hopper, screen, grinder, or crusher unless same is locked and/or tagged in compliance with Part 15.9 and the foreman is informed of his whereabouts.

H. Adequate work platforms and walkways shall be provided. All platforms, ramps, walkways, ladders, and stairways shall be in conformance with 29 CFR 1910 Subpart D. Crossover crushing and feeding equipment shall be provided and the operators shall use such crossovers and not pass over hazardous, unprotected equipment.

I. Adequate storage for tools and supplies shall be provided.

J. Dunnage and other waste or scrap material shall have a place of disposal and shall be removed so as to permit the maintenance of an adequate housekeeping program.

K. Throwing of materials from crushers, elevators, or overhead platforms shall be prohibited, except when an area is provided and barricaded to make it safe.

L. Electrical gear on crushing, screening, and grinding equipment shall be grounded and otherwise meet the requirements of 29 CFR 1910 Subpart S.

M. Dust shall be controlled at the source by adequate dust control equipment. Where this is not effectively accomplished, such additional procedures as wetting down, vacuum cleaning and other means shall be provided and used. Approved respiratory equipment shall be provided when dust concentrations indicate their need.

N. Areas under rod mills, ball mills, and other rotating equipment shall be adequately barricaded, or fenced to prevent persons passing under the operating mills unless such mills have at least 10' clearance above floor level.

O. Employees shall not work over rotating mills, spiral or drag classifiers or any other similar equipment unless protected by a bridge, catwalk, crossover or other protective device.

P. Reagents shall be used in conformance with directions and warnings as supplied by the manufacturer or supplier. Such hazards as caustic or acid burns, fire, poisons, irritants, etc., must be recognized and the operator trained and protected to prevent accidental or unmindful contact which may cause injury. The necessary protective equipment shall be supplied and used.

Q. Any chemicals used in connection with grinding or milling operations shall be labeled.

R. Before any crushing, screening, or grinding equipment is started, the operator shall be sure all persons are clear and machinery is released for operation.

S. Impact breakers, jaw crushers, crushing rolls, and similar equipment shall be protected by adequate covers, chain curtains or other effective guards to prevent material from being thrown out of the feed opening of the crusher.

R614-6-2. Window Cleaning.

A. General.

1. It shall be the responsibility of the employer to provide such safety devices and equipment as required by this rule. He shall be responsible for the proper use and maintenance of such equipment and devices.

2. It shall be the responsibility of the employee to wear and employ the devices so provided as directed and to assist in its reasonable care and maintenance.

3. Only employees who have been adequately trained and instructed shall be permitted to clean windows where the use of anchors, safety harnesses, swinging scaffolds, boatswains' chairs, tackle or other similar equipment is required.

B. Ladders-scaffolds.

1. Ladders shall not be used to clean windows whose top is more than 36 feet above the floor of adjoining ground or a flat roof or which are so placed or obstructed as to make the method unsafe. Built-up scaffolds are preferred over ladders.

2. The use of ladders with hooks attached, to be hung on or over a parapet wall or other projection, are prohibited in window cleaning.

C. Windows.

1. Windows which are of such type that both the inside and the outside of the window may be cleaned from the inside, if over 10 feet to the top of the window on the outside must be cleaned from the inside of the building.

2. Windows whose top is over 36 feet above ground, floor or flat roof, and which are of the type that cannot be cleaned from the inside must be provided with window anchors, or shall be cleaned only by use of swinging or built-up scaffolds or boatswains' chairs or other satisfactory method providing equal safety.

3. When window anchors are used, they shall meet the requirements of ANSI Standard A39.1-1969 and shall be inspected and maintained in a safe manner. No window cleaner shall use an anchor which he finds to be loose or insecure.

4. When working from a suspended scaffold or boatswain's chair, the employee shall wear an approved safety harness and shall be tied off to a line supported from a separate roof anchorage to the ground which must be separate from the rest of the rigging. The fall line shall be provided with an approved automatic locking device.

D. Equipment.

1. Extension tools shall not be over 6 feet long. A cleaner using a brush or squeegee on a pole shall attach it to his person by a wristloop, or other device to prevent dropping. Each extension device so used shall have a locking device to prevent inadvertent detachment of the brush or squeegee.

2. Brushes, buckets, squeegees, and other equipment used by a cleaner working on a scaffold or boatswains' chair shall be fastened to equipment at the moment when not in actual use in the hand of the cleaner.

3. When cleaning windows, special care shall be used where electrical supply lines present a hazard.

4. Window jacks and all other platform devices fastened to window sills for a cleaner to stand upon outside of the window without standard harnesses and anchors are prohibited.

5. Ropes used in windows, cleaning operations shall be

inspected before being used and shall be discarded if unsafe.

R614-6-3. House and Building Moving.

A. General.

1. House movers must provide and maintain good safe equipment. Jacks, blocking, stringers, etc., must be of the proper type and sufficiently strong to support the working load and provide a reasonable factor of safety.

2. Employees shall be properly instructed in the use of the blocks, stringer, jacks, and other equipment, and they shall not be permitted to work under any building or structure until it is safely supported.

B. Utilities and Special regulations.

1. Buildings or structures must not be moved within six (6) feet of any power or communication line until the following provisions have been fully complied with:

a. Arrangements have been made with electric and telephone utilities to have employees present to take care of wires which may interfere with movement of the building or structure.

b. Electric utility linemen are present to take care of any electric supply wires which may interfere with movement of the building or structure.

c. Telephone company utility employees are present to take care of telephone wires or cables which may interfere with movement of the building or structure.

d. No one except electric utility linemen shall be on top of the building or structure while it is passing within 6 feet of energized electric supply wires.

e. A ridge board has been installed on the ridge of the building or structure to assist in sliding wires over it.

2. All state, county, city, or municipal regulations shall also be observed.

3. A "special transporting permit" issued by the Utah Highway Patrol shall be obtained before buildings are moved on the highway.

R614-6-4. Industrial Railroads.

A. Car handling and layout.

1. Purpose. These orders set up minimum standards for industrial railroads in above-ground operations. Where it has been determined by the Labor Commission that, due to the process or operation, compliance with these orders would increase the hazards, industrial railroads need not comply provided such substandard areas are properly posted with warning signs, clearance distances indicated, areas barricaded, proper instructions given to workmen or other safety devices installed to provide maximum protection to workmen. Nothing herein shall be construed as preventing the movement of material over tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad, provided such movement shall be carried on under such conditions as are necessary to provide for the safety of all concerned.

2. Definition. An industrial railroad is a railway track, or system of tracks, with necessary appurtenances thereto, owned or controlled by an industrial concern not a common carrier, which operations are conducted solely by one or more of such industrial concerns.

3. Layout. Plant layout as it applies to the installations of railroad tracks, trestles, high lines, loading docks, clearances, crossing, etc., shall comply with the Manual of the American Railway Engineering Association-Engineering Division, and General Order No. 66 of the Public Service Commission of Utah.

a. Where there is a driveway storage space or passageway under a trestle, the passageway should be protected with an overhead shield.

b. On trestles and other places where material is unloaded from side of cars, footwalk can be placed at a distance and part of the floor or walk can be arranged so that it can be lifted to allow metal or other material to fall through. Cable nets or gratings should be provided to prevent employees from falling through openings.

4. Clearance. Standard clearances may not give enough protection where tracks pass doorways or corners of buildings or other places where workers may walk directly onto tracks in front of moving railroad equipment. These locations must be safeguarded with fixed railings or other means that force employees to detour or to become otherwise alerted to the hazard.

5. Crossings. Track crossings shall be reduced to a reasonable minimum and as far as practical shall be away from buildings or their obstructions which may impair visibility. The crossings inside plants shall be equipped with stop signs, blinking light, wig-wags, gates, or other means of effective warning or be protected by a watchman, switchman, or other responsible person.

6. Trestles and Highlines.

a. Trestles shall be equipped with walks, the outer edge of which shall be at least six (6) feet from the rail. Where practical, the floor of this walk shall extend to within four (4) inches of the ends of the ties. In no case shall the walk be less than 20 inches wide. Each walk shall be equipped with a standard railing and toeboard.

b. All dead-end tracks are to be provided with adequate blocks. Draw bar height is preferable.

7. Speed limits. Speed limits both for train and vehicular travel inside industrial plants, shall be established and enforced.

8. Movement of railroad cars by car movers other than locomotives.

a. Car moving equipment, such as continuous cable pullers, winches, or other types of car movers shall have adequate guards to protect the operator, should the cable break.

b. The maximum number of cars loaded and empty, must be established and operators instructed in these safe load limits.

c. Hand-type car movers shall be provided with a guard to protect the operator's hand, should the tool slip.

d. Pushmobiles, trucks, and any other mobile-type car movers which are specifically intended for car moving shall have a coupler connection to railroad car being moved except when spotting only.

e. Persons assigned as car riders or so-called car droppers, must be adequately trained and shall use a safety harness and a short lanyard attached to the car they are riding while performing this work. (This is not applicable to railroad switching crews.)

9. Reporting bad order cars.

A definite procedure must be established for reporting bad order or damaged equipment, such as pin lifters, couplers, dumping mechanisms, etc.

10. Blocking of Cars.

a. When there is danger of cars rolling or drifting and employees are required to work on them, cars must be blocked with adequate wheel blocks to prevent them from rolling.

b. Where railroad cars are equipped with effective hand brakes, they may be set up to prevent cars from moving when employees are working on or inside of them in place of wheel blocks.

11. Blue Flag Procedure. When working on tracks, unloading or loading cars such as tank cars, gondolas, box cars, etc., the following blue flag track target procedure must be followed:

a. All blue flag track targets shall be of substantial material, not less than 12" x 15" in size, shall bear the word STOP in letters not less than 4" in height, and shall be at least 28" and not more than 10' above the top of the rail when placed.

The supervisor or other person in charge will determine the distance that they are to be placed on each side of the work area.

b. Track target shall be placed on spur tracks 10' from the clearance of the lead or through tracks and the switch of the spur track locked in a closed position.

c. Track target shall be securely clamped upright to the rail or fastened securely to the side of the rail.

d. At night or when weather conditions result in poor visibility, a blue light is to be placed on the track target in the space provided.

e. Where permanent derails are installed, they must be identified with the standard derail post located 8'6" from the nearest rail. Weeds and debris must be kept free of sign posts.

f. Red flags and red lights may be used in emergency cases where standard blue flag targets and blue lanterns are not immediately available, but must be replaced as soon as possible with the standard blue target and blue light.

g. Train crews shall not couple into or move railroad equipment which is protected by blue flags.

h. Railroad equipment shall not be placed in front of blue flags so as to obscure them without notification to and approval of the supervisor or other person in charge of the work on the tracks. The supervisor in charge of the work will then replace the flag for proper protection.

i. The blue flags or derails are to be removed only under the direction of the supervisor or other person in charge of the work on the tracks.

j. When two or more supervisors have groups of employees working on the same tracks, each supervisor will place his own protective lock on the blue flag derail or switch.

k. The blue flag or derail lock must be removed promptly when the work is completed and the tracks are ready for their normal use.

l. The Yardmaster or other designated person will be notified at the start and finish of all work being performed on lead or through tracks.

m. When men are required to repair cars or make mechanical adjustments in the field, the blue flag procedure must be followed.

n. At any time the blue flag procedure cannot be used, a flagman or safety watchman must be provided to give protection for employees working on equipment.

o. Derails shall never be placed on molten metal or slag tracks unless there is no other means of giving adequate protection for employees or equipment.

12. Unloading cars.

a. Training of employees is required before they are assigned to unload gondolas, bottom dumpers, side dumps, or air dump-type cars.

b. Employees are not permitted to work inside railroad cars when they are being unloaded with a magnet.

c. Bottom dump and side dump car mechanisms are to be operated with tools designed for dumping and they must be in good working condition. At no time shall tools in poor repair be used. Their condition must be reported to the supervisor immediately.

d. At no time shall a railroad car be dumped if the dumping mechanisms are defective which makes them unsafe to operate. Such defective cars will be referred to the proper authority.

e. When employees are required to enter covered hopper cars or tank cars through the hatch cover opening, the hatch cover must be fastened securely open so there is no chance of its closing while the employee is in the car.

f. When it is necessary for employees to enter covered hopper cars or tank cars, safety checks must be made to determine that there is no toxic or explosive gas or lack of oxygen.

13. Closed car thawing houses and heating equipment must be so designated and constructed as to prevent accumulations of toxic or explosive gases.

14. Before employees or locomotives are permitted to enter closed car thawing houses when in operation, ventilation must be provided to insure no toxic or explosive gas or lack of oxygen is present.

15. Lighting-Classification Yards. Classification yards and other similar areas where trains are made up to or broken down shall conform to the specification issued by the American Railway Engieering Association.

B. Operations and maintenance.

1. Trackage and controls. Trackage, roadbed signal systems, traffic control system, power lines should be maintained in good condition and shall be regularly inspected.

2. Switch throws shall be so installed as to provide adequate clearance for switchmen.

3. The rod extending from the bridle bar to the throw shall be covered or the stumbling hazard shall be otherwise minimized.

4. Derail devices shall be installed where necessary on all side tracks on or near junction with connection to through traffic lines.

5. Dead-end tracks shall have bumping blocks or the equivalent to prevent cars from running off the end of the tracks.

6. Where foot travel is required adjacent to switches, a walkway shall be provided.

7. Employees shall be prohibited from sitting on tracks or under cars.

8. Employees shall be prohibited from climbing over or crawling under cars to cross tracks, unless it is in the performance of his assigned duties.

9. Signs and Flags.

a. A sign reading STOP (white lettering on blue background) must be placed on the track, or between the rails of the track, in approach to cars which are being loaded, or unloaded, and when the sign is displayed cars must be not coupled to nor moved nor other cars placed so as to obstruct the view of the sign. Warning lights must be attached to the sign by night.

b. The sign will be placed and removed only by an authorized employee. The sign must be displayed to protect employees loading, unloading, or working in or about cars, and must not be removed until it is known that employees and others are clear.

c. When a sign reading STOP (white lettering on blue background) is displayed, the engine must not be coupled to a tugger, nor shall the car be moved by other means.

d. A car placarded Explosives, Flammable Liquids, Dangerous shall not be cut off while in motion. No car moving under its own momentum shall be allowed to strike any car placarded Explosives, Flammable Liquids, or Dangerous nor shall any such car be coupled with more force than is necessary to complete the coupling.

e. Loaded tank cars with any of the above placards must not be cut off until the hand brake has been tried and found in proper working condition.

10. Electrical.

a. When central traffic control exists and its operation is interrupted or suspended or any irregular function of the system occurs, rail movement shall not be allowed to continue until stoppage or malfunction has been determined, and only then if such movement can be made safely and with direct communication with traffic control operation.

b. All principal electrical switches shall be marked.

c. If the track is used for the return circuit, both rails shall be well bonded at every joint, excepting those tracks governed by automatic block signals.

11. Riding Equipment and Coupling.

a. Employees are cautioned not to get on or off an engine

or car which is in rapid motion.

b. Employees must face the equipment in descending ladders on engines and cars, whether standing or moving.

c. Employees are forbidden to ride on draw bars. When movement is being made, employees must not go between engine or ride on leading footboards of the engine in direction of movement, except for the purpose of uncoupling car from engine. Standing, walking on top of, and jumping from car to car is prohibited.

d. If uncoupling lever fails to work, a stop shall be made before uncoupling car. When necessary to change the alignment of couplers cars must be stopped, and under no circumstances should an attempt be made to adjust couplers with foot or hand or raise lock pin by hand, while cars are moving.

e. If necessary to make change or repairs to couplers, the circumstances must be understood by all employees who may, through misunderstanding, move or cause the car to be moved; the cars should be separated not less than one car length to reduce possibility of injury, should they be moved by mistake. Employees should, when possible, avoid standing directly in line with couplers.

f. Trainmen and enginemen must forbid employees whose duties do not connect them with the movement, to get on and off engines or cars, while in motion.

g. No one except the train, engineer crew and person authorized by management should be permitted to ride on or in a locomotive or on a train.

h. "Poling" or moving a car on another track with a pole should be done only in extreme emergency and under direct supervision. DO NOT PUSH CAR UNTIL ALL PERSONS ARE IN A SAFE PLACE.

i. Rocker or "Cradle" type dumping cars shall be equipped with an efficient positive locking device.

j. Brakemen are not permitted to ride on or between slag pots, or between slag pot and locomotive.

k. Before spotting a slag pot for filling, it shall be inspected carefully to insure that no water or wet debris is in the bottom of the pot.

l. Pots and ladles must not be filled so full as to cause spillage.

m. Before dumping slag in a new place, a member of the crew must investigate to insure that no one will be endangered by the hot slag.

n. In handling railroad cars, employees must:

(1) Use standard brake clubs.

(2) Wear a safety hat.

(3) Wear snug-fitting clothes.

(4) Be required to ride the front end of all trains that are being pushed.

(5) Get off a moving locomotive from the side, well in the clear of the footboard.

(6) Not stand on or between the rails when mounting a moving location.

12. Locomotives.

a. Locomotive shall be equipped with a bell and a whistle, both capable of giving a loud and clear warning signal.

b. Each locomotive used, between sunset and sunrise, shall have two lights, one located on the front of the locomotive and one on the rear, each of which shall enable a person in the cab of the locomotive under the condition, including visual capacity, to see a dark object for a distance of at least 300 feet ahead, and in front of such headlight in yard service and 800 feet in road service.

c. All locomotives equipped with footboards shall be equipped with toeboards. The grab irons and handrails shall be well maintained at all times.

d. Safety latches shall be provided on electric locomotives to hold trolley poles, current collector, or pantagraphs away from the trolley wires.

e. The engineer or motorman shall be made responsible for the safe operation of the locomotive.

f. Locomotives shall not be run over tracks where dirt or other materials strike the footboards.

13. Car Storage.

a. When practical, cars must be kept clear of any street or public crossing, and at least one hundred feet from the crossing.

b. A sufficient number of hand brakes must be set to hold cars; if brakes are inoperative, cars must be secured otherwise. When cars are set out on a grade, they must be coupled, if practical, and in addition to brakes being set, wheels must be blocked.

c. Cars shall not be stored on tracks unless protected with derails, when facing point switches or ascending grades toward main track, except in emergency or on instructions of proper authority, and in such cases cars must be properly secured. Wheels must be blocked where necessary.

d. When empty cars are stored on tracks adjacent to buildings an opening of at least forty feet must be made every five car lengths.

14. Air Brake Systems.

a. Where air brake systems are used, the following is applicable:

(1) Train line pressure for passenger trains is 110 pounds, for freight and mixed trains, 90 pounds. Should the proper control of a freight train or mixed train make it necessary, the use of 90 pounds brake pipe pressure is permissible. Brake pipe pressure for yard engines is governed by class of equipment handled or minimum of 80 pounds.

(2) Main reservoir pressure must be maintained at least 15 pounds minimum above adjustment of the feed valve, or brake pipe pressure.

(3) The proportion of air brakes in operation must at no time be less than 85 percent of all the cars in a train. On ascending grades rear car must have operative air brakes.

(4) Train air brake system must be charged to require air pressure, angle cocks and cut out cocks must be properly positioned, air hose must be properly coupled and must be in condition for service. An examination must be made for leaks and necessary repairs made to reduce leakage to a minimum. Retaining valves and retaining valve pipes must be inspected and known to be in condition for service.

(5) It must be known that the air brake equipment on engines is in a safe and suitable condition for service.

15. Air Brake Application.

a. Leakage from main air reservoir and related piping shall not exceed an average of three pounds per minute in a test of three minutes duration, made after the pressure was reduced forty percent below maximum pressure.

b. Brake pipe leakage must not exceed five pounds per minute after a reduction of ten pounds has been made from brake pipe air pressure of not less than seventy pounds.

c. With a full service application of brakes, and with communication to the brake cylinders closed, brakes must remain applied not less than five minutes.

d. Compressor governor shall be adjusted so that the high pressure side causes the compressor to unload at 140 pounds and the low pressure side causes the compressor to load at 130 pounds.

e. Leakage from control air reservoir, related piping and pneumatically operated controls shall not exceed an average of three pounds per minute in a test of three minutes duration.

f. Compressor or compressors must be tested for a capacity by orifice test as often as conditions require but not less frequently than once every six months.

g. Every main reservoir before being put into service, and at least once every eighteen months thereafter, shall be subjected to hydrostatic pressure not less than 25% above the maximum working pressure.

h. Where a stop is made on a grade for an indefinite period, brakes on all engines must be fully applied and sufficient hand brakes set when necessary to hold the train and air brakes on cars released. When on an ascending grade, hand brakes must be set on rear and on a descending grade, set on head end of train.

i. When stop is for a short period and retaining valves are in ue, the air brakes, when necessary, may be applied and released once every two minutes, to assist engine brakes to hold the train.

j. When setting cars out at intermediate points, a normal brake application from the automatic brake valve must be made, hand brake applied, close angle cock from locomotive, bleed air brake system on car, block wheels of car; the air brakes on the car will not be applied under an emergency application (big hole).

16. Air Brake Maintenance.

a. Before adjusting piston travel or working on the brake rigging, brakes must be cut out by closing cut-out cock in the branch line, all reservoirs drained and necessary precautions taken.

b. Air gauges must be tested at least once every six months and whenever any irregularity is reported. They shall be compared with an accurate deadweight tester, or test gauge. Gauges found inaccurate or defective must be repaired or replaced.

c. Distributing or control valves, brake application valves, equalizing piston portion, feed and reducing valves, safety valves, brake pipe vent valves, relay valves, magnet valves, dirt collectors and filters must be cleaned, repaired and tested as often as conditions require to properly maintain them in a safe and suitable condition for service.

d. On engines so equipped, hand brakes, parts and connections must be inspected and necessary repairs made as often as the service requires.

e. Minimum brake cylinder piston travel must be sufficient to provide proper brake shoe clearance when brakes are released.

f. Maximum brake cylinder piston travel when engine is standing must not exceed the following:

TABLE 1

	Inches
Driving wheel brake	6
Swivel type brake with brakes on more than one truck operated by one brake cylinder	7
Swivel type truck brake equipped with one brake cylinder	8
Swivel type truck brake equipped with two or more brake cylinders	6

g. Foundation brake rigging, and safety supports, where used, must be maintained in safe and suitable condition for service. Levers, rods, brake beams, hangers and pins must be of ample strength and must not bind or foul in any way that will affect proper operation of brakes. All pins must be properly applied and secured in place with suitable locking devices. Brake shoes must be properly applied and kept approximately in line with treads of wheels or other braking surfaces.

h. No part of the foundation brake rigging and safety supports shall be less than 2 1/2 inches above the top of the rail.

i. Before a car is released from a shop or repair track, it must be known that the brake pipe is securely clamped, angle cocks in proper position with suitable clearance; valves, reservoirs and cylinders tight on supports and supports securely attached to car.

j. When cars are on shop or repair tracks, hand brakes and connections must be inspected, tested and necessary repairs made to insure they are in a suitable condition for safe and effective operation.

k. Brake equipment on cars must be cleaned, repaired, lubricated and tested as often as required to maintain it in a safe and suitable condition for service.

R614-6-5. Livestock Butchering and Bulk Carcass Handling.

A. Corrals and livestock.

1. Unloading areas are to be constructed so as not to endanger those employees working in these areas. They are to be constructed with a minimum width of three (3) feet. The area must be lighted with sufficient illumination so that the work can be done safely.

2. Livestock holding pens are to be constructed of a heavy type material, lumber or metal, that will stand extreme pressures from livestock. Also, all sides shall be made climbable.

3. Floors of kill pens will be made of a material with a texture to reduce slippage.

4. Employees who will work with livestock are to be physically and mentally capable to perform their duties.

5. Before any employee is to work with livestock, he shall be aware of the dangers of livestock handling.

6. Electrical shocking devices (hot shots) used for moving livestock shall be manufactured for the purpose with controlled power output and shall be used according to the manufacturer's recommendations. No direct wire shall be used for this purpose.

B. Kill Floors.

1. Dressing platforms shall have standard railing and toeboards at the back side and short board or rail on the dressing side. The rail on the dressing side shall have sufficient clearance above the platform for cleanup but low enough to catch an employee in case of slippage.

2. Employees using explosive-actuated knockers shall be instructed in the use of the tool.

3. Employees using pneumatic knockers shall also be instructed in the use of the tool.

4. Couplings on high pressure hoses shall be pinned, chained or otherwise secured to prevent them from uncoupling accidentally.

5. Employees knocking cattle with the explosive-actuated or pneumatic knockers need not be carded by the manufacturer.

6. Explosive-actuated or pneumatic knockers, either loaded or unloaded, shall not be pointed at workmen.

7. Explosive-actuated knockers shall not be loaded until just prior to intended firing. No loaded tool shall be left unattended.

8. All hoist and balancers shall be equipped with safety chains.

9. All control switches are to be suspended and free swinging so as to permit the operator to move completely clear of hoist area.

10. Safety hats shall be worn by all employees.

11. All water and steam lines 160 degrees or more are to be designated as such by a sign indicating hot water and hot metal pipes shall be located or covered so as to prevent contact with hot surfaces.

12. Splitting area must be clear of all unauthorized personnel before operating saw.

C. Coolers and loading areas.

1. All rails carrying animal carcasses shall be under a periodic maintenance and inspection schedule. All rail hangers, connecting bolts and switching areas are to be checked for tightness and wear.

2. Freezers, coolers, and dry storage areas shall have provisions for adequate aisles and exits.

3. Unit coolers, heaters and refrigeration piping that is within stacking limits must be adequately protected. In ceiling

coil type freezers, all stacking shall be limited to avoid striking and breaking pipes.

4. Defrosting by heat is preferred to scraping of coils. If scraping is necessary, great caution must be used and provisions for emergencies must be made.

5. Unit coolers must be provided with adequate barriers to prevent any product from coming in contact with either unit or piping. Valves, pump-out lines and the like shall be so located at the installation so that they are not vulnerable to damage.

6. All freezer and cooler doors shall be equipped with two-way door openers.

7. All dock areas are to be kept clean and free of all refuse.

8. Empty beef trollies shall not be left hanging on any rail.

9. All dock boards or plates shall have an under-structure preventing them from sliding backward or forward when in loading position. Plates shall be provided with suitable chains, or other fixture, on each side for safe lowering into position.

10. Workers must be trained in safe lifting.

11. Sanitation measures taken shall be such as to protect the health and well being of the employees. A system shall be established and maintained for waste and trash disposal so that reasonable level of housekeeping may be maintained. Wastes shall not be allowed to accumulate so as to ferment or putrefy or otherwise become unsanitary and hazardous.

12. A sufficient level of illumination shall be supplied for the type of work in the area. Reference: ANSI Standard A11.1, Industrial Lighting.

TABLE 2

MEAT PACKING

Slaughtering	30 foot-candles.
Cleaning, Cutting, etc.	100 foot-candles.
Inspection, difficult	100 foot-candles.

R614-6-6. Motor Vehicle Transportation of Workers.

A. General.

1. The purpose of this Safety Code is to prescribe minimum standards for the safe transportation of employees to and from their places of employment as set forth in Title 34, Chapter 36, Transportation of Workers.

2. These rules shall apply to every motor vehicle, including passenger automobiles and station wagons, used to transport employees to and from their place of employment whether or not used upon a public highway.

3. All specifications in this code are minimum. At any particular operation these rules can be enhanced or made more stringent if necessary to protect the life and safety of employees.

4. All owners of motor vehicles used to transport workers, or their duly appointed agents, and drivers of such vehicles shall abide by all safety orders issued by the Labor Commission, or by its duly authorized representative.

5. The right of inspection and examination at any reasonable time is reserved by the Labor Commission or its duly designated agent.

6. These rules shall not apply to motor carriers or to motor vehicles owned and operated by the government of the United States.

7. These rules and regulations do not apply to the transportation of agricultural workers.

B. Drivers.

1. Only authorized, experienced, competent, qualified and licensed drivers, not less than 18 years of age, shall be permitted to operate vehicles used to transport workers. A chauffeur's license is not required, except as may be required by law.

2. No employee shall be used to operate a vehicle for the purpose of transporting workmen after such an employee has completed twelve (12) aggregate hours of work in any period of twenty-four (24) consecutive hours, excluding rest stops and a meal period of not exceeding one hour. During period of regular shift change, this shall not preclude working two (2) alternate eight-hour shifts with an eight-hour off period between the two shifts.

NOTE: A rest stop is a period of time of not less than two (2) hours and during which time the employee is released from all duty and responsibility. Aggregate hours of work includes all types and classifications of employment and shall not be construed to apply to only those hours driving a vehicle.

3. In lieu of responsible supervisory personnel the operator of a vehicle shall at all times be in charge of workers and responsible for the observance of safety rules.

4. There shall be some signal system, or signalling device provided for the supervisor to communicate with or signal the driver, where the supervisor is separated from the driver.

5. Signals adopted shall be simple and understood by both driver and supervisor. If a signalling device is used, it shall be maintained in good working order.

C. Operation of vehicles.

1. No vehicle shall be loaded beyond its safe carry capacity.

2. No motor vehicle shall be driven if it is so loaded, or if the load thereon is so distributed or so inadequately secured, as to prevent its safe operation.

3. No motor vehicle shall be driven when the passengers or any object obscures the driver's view ahead or to either side, or interferes with the free movement of his arms or legs, or prevents his free and ready access to his controls and emergency equipment, or prevents the free and ready exit of any persons from the vehicle.

4. All vehicles transporting workers shall observe all motor vehicle laws of this state and the cities and counties in which the vehicle is operated.

5. The driver of any vehicle transporting workers, before crossing at grade any tracks of a railroad, shall stop such vehicle not less than 10, not more than 50 feet from the nearest rail of such track, and while so stopped shall look and listen in both directions along such tracks for approaching trains or cars.

a. This requirement shall not apply:

(1) To tracks where traffic control signals are in operation and give indication to approaching vehicular traffic to proceed.

(2) To industry track crossing across which train operations are required by law to be conducted under flat protection; or

(3) To industry track crossing within which the indicated speed of vehicles is 20 miles per hour.

b. Unless a train is approaching, motor vehicles carrying workers are not required to stop at crossings where the Public Service Commission has determined and plainly marked exempt.

6. Only persons authorized by management shall be allowed to ride on vehicles.

7. Vehicles transporting workers shall be driven completely off the highway or road to discharge or take on workers. When the width of the highway or road does not allow the observance of this rule, the vehicle shall draw to the extreme right of the usable portion of the road before discharging or taking on workers, provided there is 16 feet of roadway opposite such vehicle for free passage of other vehicles.

D. Securing of Tools, Equipment, etc.

1. Racks, boxes, holsters, or equivalent means shall be provided and arranged so passengers will not be endangered by tools or equipment being transported, loaded or removed, and tools and equipment preferably placed or arranged so they are accessible from the outside of the vehicle.

2. Tools and materials shall be secured in the racks and boxes provided.

3. When materials of any type are transported at the same time, workers shall be protected from the hazards of materials by adequate partitions or proper securing of loads.

4. A motor vehicle used to haul or transport workers must

be equipped with sides at least 42" high and shall have adequate seating facilities.

E. Hauling of Explosives Prohibited.

No explosives, injurious chemicals of pesticides shall be hauled on any vehicles while they are engaged in transporting workers. This rule shall not prohibit the driver and the qualified powder crew from riding in a vehicle in which explosives are being hauled.

F. Hauling of Gasoline, etc.

Gasoline and other low flash point liquids shall not be hauled on vehicles transporting workers except in approved safety containers of not more than five-gallon capacity, and provided such containers are carried in a safe suitable location outside the passenger compartment. Such containers shall be carried as far away from the passenger compartment as possible and where they will not block exit from the vehicle and shall be firmly secured to prevent shifting, or shall be placed in well ventilated compartments or racks.

G. Refueling of Vehicles.

1. Smoking in the vicinity of vehicles being refueled is prohibited.

2. Refueling while motor is running or when within close proximity to any open fires or flame is prohibited.

H. Workers' Duties.

1. Workers riding in motor vehicles shall not stand while the vehicle is in motion. Passengers must wait for the vehicle to come to a complete stop before boarding or leaving.

2. Workers shall be prohibited from riding on running boards or fenders, hoods or cab tops, or with their arms or feet hanging out of or over the rear or side of any vehicle, or on sides of pickups or on tail gates.

3. When dismounting from a vehicle on a highway or road, the workers shall wait until the vehicle has proceeded before crossing the road unless the vehicle has stopped at its destination.

4. Workers wearing equipment which might injure a fellow worker (spurs, exposed sharp tools, etc.) shall remove such equipment before entering any vehicle in which workers are being transported.

5. Scuffling or horseplay while riding in any vehicle is prohibited.

6. Any hazardous condition or defect of a motor vehicle or unsafe practice of driver or workers riding in vehicles used to transport workers shall be reported to the employer, supervisor, or driver as soon as possible by any worker having knowledge of such conditions.

I. Heating the Vehicle.

Any heating units provided for the comfort of workers riding in vehicles used in their transportation shall be guarded or insulated to prevent workers from being burned by accidental contact. The use of hot water radiator type heaters is recommended.

1. If it is necessary to use stoves for heating, such stoves shall be securely attached to the bed of the vehicle and shall be equipped with doors which lock securely. Pipes and other attachments shall be securely fastened to the stove and to the vehicle. Pipes shall be either of continuous length or welded or riveted to the joints.

2. Heating facilities shall be arranged so that smoke, fumes or gases will not enter the vehicle.

J. Inspection, Testing, and Repairs.

1. All vehicles shall be kept in good repair and safe operating condition at all times. Vehicles with defective gears, tires, steering equipment or brakes shall not be used to transport workers.

2. Inspection or testing by the driver of all parts vital to the safe operation of vehicles, such as brakes, steering gear, tires, lights and signalling devices, shall be made at the beginning of each shift or each day, and as often as necessary during use. Any condition found then or at any other time which will prevent the safe operation of the vehicle shall be corrected before the vehicle is used.

3. Compartments for workers shall be kept in a clean and sanitary condition.

R614-6-7. Hot Metallurgical Operations.

A. The purpose of this rule is to cover the minimum standards and requirements for the safe operation and maintenance of all types of facilities associated with Hot Metallurgical Operations. Other Safety Rules and Regulations must be complied with when and if they apply to these operations. Furthermore, it is not the intent of this rule to make specific rules to cover every hazard of an operation. Each operation shall be analyzed for hazards peculiar to that operation and then Safe Operating Rules and Procedures Shall Be Provided and Administered by Management.

B. Provisions shall be made for on-the-job training of personnel to insure a safe operation.

C. Work shoes or leather boots with a minimum height of six (6) inches shall be worn by personnel working around molten metal or other hot process materials. Safety shoes are recommended. Special protective equipment shall be provided and worn as required.

D. In areas where employees are exposed to toxic and nuisance gases and dusts, adequate ventilating and collecting systems shall be provided to insure that such toxic and nuisance gases and dusts are maintained within the recommended maximum allowable concentration as proposed and adopted by the American Conference of Governmental Industrial Hygienists. Where this cannot be accomplished and employees are required to work in excessive concentrations, NIOSH approved respirators or supplied fresh air breathing equipment shall be provided.

E. Equipment shall be provided to test for the presence of toxic and nuisance gases and dusts and qualified personnel will make and evaluate such tests.

F. Furnaces.

1. Furnace combustion systems shall be equipped with fail safe controls and these controls shall not be by-passed during normal operations. Also emergency shut-off systems for fuel supply shall be provided if necessary.

2. Fuel lines and control valves shall be properly identified and accessible.

3. To insure the safe operation of stand-by fuel systems, operating instructions shall be posted in a conspicuous and accessible location and employees trained in these procedures.

4. Whenever a hazard exists while charging or feeding furnaces or process equipment, an adequate warning system shall be provided and used to warn and protect personnel.

5. In processes where water or wet material are necessary to the normal operation of the process, they shall be used only under carefully controlled conditions.

6. On multiple hearth furnace operations, where it is required to work on the furnace as a normal operating procedure adequate working platforms shall be provided when working hearth levels more than four (4) feet above normal roster floors.

7. Solid decking shall be provided where a hazard exists of free flowing hot material falling from one floor to another.

8. Material to be charged into a furnace shall not include items foreign to the normal process that may cause an explosion, such as pressure vessels or closed cylinders.

9. Adequate procedures and tools shall be provided and compliance enforced for removal of product from furnace or oven or while working hot process materials. When pipe is used as a tool, the end adjacent to the employee must be sealed.

10. Copper matte launders shall be covered whenever practical.

11. Unauthorized personnel shall not stand near pots,

ladles, furnaces, etc., when molten material is being handled. Warning systems shall be provided and sounded before a pour is made or the material is moved.

12. Bails and trunions on ladles and pots used to carry molten material must be tested by nondestructive methods to determine if any flaws exist. The tests are to be made and evaluated by qualified personnel on regular, scheduled periods of not to exceed twelve (12) months and a record maintained of each inspection. Defective components must be removed from service immediately.

13. The dumping hook for pots or ladles shall not be attached until the pot or ladle is in the specific area where it is to be dumped.

14. Clean-up crews assigned to work in the area of molten metal, hot slag, hot by-products, hot calcine or similar products shall be adequately instructed and supervised concerning hazards of material and location.

R614-6-8. Elevators, Escalators, Aerial Trams, Manlifts, Workers' Hoists, Etc.

A. This part will cover elevators of various types, dumbwaiters, escalators, moving walks, aerial trams and ski lifts, manlifts, and personnel and material hoists or other mechanical applications of a similar nature when used to transport employees. It will not cover conveyors used to move material to and from storage, stacking or tiering machines, mine hoists, elevators, or skips.

B. Where local laws or ordinances have more strict regulations such laws or ordinances shall apply.

C. Elevators, escalators, and moving walks shall be designed, installed, operated, inspected, maintained and tested as specified in American National Standard Institute, A17.1, which is hereby incorporated by reference.

D. Aerial tramways and ski lifts shall meet the provisions specified in American National Standards Institute Code B77.1 which is hereby incorporated by reference.

E. Manlifts shall meet the provisions specified in American National Standards Institute Safety Code A90.1 which is hereby incorporated by reference.

F. Material hoists and workers' hoists shall meet the safety provisions specified in American National Standards Institute A10.2 and A10.4, which is hereby incorporated by reference. For a hoist to meet the provisions to transport workers (A10.4) it shall also meet safety provisions, out of American National Standards Institute Safety Code A17.1 which is hereby incorporated by reference.

G. Material hoists which do not meet the requirements for worker's hoists (A10.4) must be clearly marked "NO RIDERS" or a similar sign. All employees are required to enforce any restrictions against any workers riding such hoists.

H. Before any equipment covered by this part is installed or a major revision or remodeling begins on such equipment, the Administrator must be advised at least one week in advance of such installation, revision, or remodeling.

R614-6-9. Filters and Centrifuges.

A. Filters-General.

1. The necessary protective equipment shall be supplied and used, to protect employees from chemically harmful, hot or irritating materials.

2. Most filtration equipment is dependent on vacuum and/or pressure operation. Therefore, hazards produced by such vacuum or pressure shall be recognized and precautions and training given commensurate with such hazards.

3. Covers, ventilating hoods, feed chutes or other auxiliary equipment located overhead or suspended above the workers shall be adequately secured by recognized engineering standards and shall be inspected frequently to assure that corrosion wear or any other factor has not deteriorated the suspension system, making it unsafe.

4. When hoods or covers are movable and raised (suspended) so that workers must work under them, positive blocking or supports sufficient to support the load must be in place before the employee commences work under the hood or cover.

5. Floors, walkways, ramps, stairs, or other such equipment shall be adequate for the work performed and they shall have handrailings. Where the materials handled cause floors to become slick, anti-skid surfaces shall be provided.

6. When it is necessary to handle heavy components (in excess of 100 lbs) as a regular part of the operation, a hoist shall be provided. In some cases, depending on the lifting position of the employee, a hoist may be necessary when the components weigh less than 100 lbs.

7. Any filter which is activated by pressure shall be equipped with a pressure gauge installed so as to indicate the pressure within the functional mechanism of the filter.

8. All electrical gear installed in connection with filtration must be grounded. Switch gear should be waterproof or installed above or away from the filtration area. All switch gear shall be properly identified.

9. Sumps or other floor openings shall be protected by covers or railings or other satisfactory barricades.

B. Plate and Frame Filters.

1. The filter shall be fitted for the maximum pressure which can be delivered by the feed pump.

2. Plates and frames shall be properly fitted and dressed so as to reduce leakage to a minimum.

3. Provisions shall be established to control leakage from squirting from the filter into the work area. A full cover is recommended.

4. The handles on plates and frames shall be securely attached. When wooden plates and frames are used, the handles shall be inspected and maintained so as to prevent their pulling out while being handled. Plates and frames with loose handles shall not be installed when reassembling a filter.

5. Spigots, when used, shall be adequately maintained.

6. When the filter cake is dropped into an agitator, hopper, extender chute, or tank, a grizzly or other effective means shall be provided to protect the employee from getting caught or falling into such equipment.

7. Hydraulic closers shall be fitted for the pressure encountered. Adequate blocks or other satisfactory method shall be provided so that the hydraulic pressure can be relieved during the operating cycle of the filter.

8. When a bar is used to tighten the filter, a hand guard or block or other satisfactory means shall be provided on the handle to protect the hands of the operator from being mashed against the floor or other contact surface.

C. Drum filters.

1. Driving machinery shall be guarded or totally enclosed.

2. Agitator drive arms shall be arranged or shall be guarded so that the employee is protected at scissor or pinch points.

3. Air lancing of the feed bath or air agitation shall be controlled. Goggles or face shields shall be worn when using an air lance.

4. Repulper agitators shall be protected by grizzly or other means so that hands or feet cannot come in contact with the blades.

5. Filters shall be maintained or a cover shall be provided so that the blow cannot pass through holes in the blanket in such a manner as to endanger workers. This shall be interpreted as meaning hazardous chemicals or hot solutions.

6. Belt discharges shall be guarded so that the nip points are enclosed or otherwise protected.

7. Employees shall not enter the inside of a drum until it is established that a safe atmosphere exists. A fan or other

source of breathable air shall be supplied to insure an adequate oxygen supply inside the drum. An employee shall be available outside the drum in case of emergency.

D. Disc or Leaf Filters.

1. Driving mechanisms shall be adequately guarded or enclosed.

2. Adequate footing shall be provided when changing sectors, retainers or rods.

3. The filter shall be fitted for the vacuum and pressures encountered.

4. Disposal of filter cake shall meet the provisions outlined in R614-6-9.B.6.

5. If conveyor discharge is used, the conveyors shall meet the standards set forth in R614-5-2.

E. Pressure filters-Horizontal and Vertical tank type.

1. Pressure filter tanks shall be constructed under the standards established for unfired pressure vessels.

2. The filter shall be fitted for the pressures encountered.

3. All seal gaskets shall be maintained so as to preclude leakage.

4. Closure mechanisms shall be positive so as to prevent any possibility of the tank opening while under pressure.

5. Hinged lever type of closures shall be so arranged that when the handle passes center, when opening the filter, that the operator is protected from the thrust on the handle or it is reduced to a safe force which can be easily controlled.

6. Individual screw type closures shall all be in place and tightened so as to receive strain uniformly around the circumference of the tank before the filter is placed in operation.

7. No pressure tank type filter shall be opened until all pressure has been relieved and is open to atmosphere.

8. Filter media shall be cleaned in a safe manner. Due caution shall be exercised when using steam, hot water or compressed air.

F. Pan, Tray and Belt Filters.

1. The applicable provisions for all above-mentioned filters shall be followed.

2. The slurry feed shall be so controlled to prevent splashing onto the operator.

G. Vacuum and filtrate pumps and lines.

1. All drives shall be enclosed or guarded.

2. Lines shall be adequately identified.

3. When valves are installed in lines, they shall be accessible from floors, ladders or platforms provided, or shall have extension handles to the working area.

H. Filter aids and reagents.

1. Operators shall be knowledgeable concerning any additives used and the reaction which may be hazardous.

2. Chemicals which may be poisonous or severely ittiating shall have such warnings posted along with procedure concerning their use and instructions in case of hazardous exposure.

3. The storage and handling of any chemicals used shall be in conformance with the Manufacturing Chemists Association data sheet concerning the material.

4. Steam and hot solutions or slurries shall be identified and where practical shall have the lines insulated in areas where employees may contact them.

I. Centrifuges.

1. The housing of all centrifuges shall be electrically grounded.

2. Operators of centrifuges shall be trained concerning the hazards of the operation.

3. Each centrifuge shall be equipped with an interlocking device that will prevent the cover from being opened while the machine is in operation or under power.

4. When the cover is bolted, the interlock will not be necessary, but a positive procedure of lockout and tagging shall be enforced.

5. Each centrifuge shall be adequately anchored and shall be equipped with a vibration cutout device. This must be maintained operable at all times. This requirement may be waived when the centrifuge has a full-time attendant.

R614-6-10. Food Processing.

A. Grinders and cutters.

1. Production rooms shall have adequate lighting throughout working and storage areas.

2. Machines and equipment shall be installed and used in the manner recommended by their manufacturer.

3. Machine operators shall be trained in the machine operation and especially in safety as concerns the particular machine or process.

4. Grinders shall be provided with suitable pushing bars. Supervision shall see that the pushers are used and that hands are not used to feed grinders.

5. Every power-driven food grinder of the worm type shall be so constructed, installed or guarded that the employee's fingers cannot come in contact with the worm. Examples:

a. Mechanical feeding.

b. Grating or bar guards over opening arranged in such a manner that the fingers cannot reach the worm.

c. Distance from the feed opening to screw in excess of an arm's length.

d. Restricting the size of the feed opening.

6. Under no circumstances shall pusher be used in lieu of a positive method of guarding)

7. Before cleaning food grinders, choppers, or similar powered equipment, the controls shall be locked and/or tagged in the off position.

8. Processing machines shall be installed at the proper height, or platforms installed, so the operator can accomplish the work without using stools or make-shift devices to stand on.

9. Chopper and blender bowls shall be guarded. When guarding is not practical, explicit instructions and supervision must assure that hands do not enter the bowl.

10. Machines having a plunger, piston or fast moving press type of operation shall be equipped with two hand controls, remote controls, interlocking devices, etc., to prevent the operator from being caught in the closure.

11. Knife changing or any repairs or changes which will permit the employee to be caught in the machinery or its driving mechanism shall not be done until the power controls are in the off position and/or tagged and locked.

B. Material and arrangement.

1. Machines shall be installed so as to give safe operation space and adequate access.

2. A system shall be established and maintained for waste and trash disposal so that a reasonable level of housekeeping may be maintained. Wastes shall not be allowed to accumulate so as to ferment or putrefy or otherwise become unsanitary and hazardous.

3. Excess material in the work places may be hazardous and shall be avoided.

4. Equipment shall be maintained so as to prevent metal edges from wearing sharp, tools from wearing or otherwise becoming hazardous, broken handles, etc. Buckets, pans, trays, etc., shall have a place and be in their place. Bails and handles on service containers shall be maintained safe.

5. Hoses shall be selected for the type of usage involved. Hoses shall be identified so that there is not an interchange of cold water hose into hot water, air or steam usage.

6. Hose couplings on air, hot water, and steam lines shall be secured by pinning, chains, or other satisfactory methods.

7. Hoses shall not be strung across work areas and left unattended. A rack, reel or other device shall be provided for hose storage.

C. Tools.

1. Hand knives and other sharp tools when carried, except in hand, shall be kept in a scabbard, case, holder or otherwise protected from accidental contact.

2. 29 CFR 1910 Subpart S adopts the National Electrical Code. This includes the grounding of all machines and electrical tools, and extension cords. Electrical installation must meet the provisions of these codes.

3. All portable tools shall have suitable guards that meet accepted codes. Employees using portable power tools shall be instructed and supervised in their proper use and care.

D. Refrigeration maintenance.

1. All mechanical personnel who are scheduled or designated to do any work whatsoever on a refrigeration system shall be briefed on the entire job before beginning. The production foreman and superintendent, safety department, and emergency personnel shall be notified that work is to be done.

2. Some of the basics that shall be checked before a refrigerant system is opened are:

a. Trace out piping.

b. Locate branch shut off valves.

c. Tag or lock out all switches, equipment, and valves that may affect the job.

d. Obtain all necessary safety equipment, and be sure that it is in operating condition.

e. Check to see that chemicals and gases are purged or evacuated from the system.

f. Note the effect of liquid and oil on pump-out operations.

g. Confer with associated personnel on safety precautions, safety equipment, standby safety equipment, emergency plans and first-aid measures.

h. Locate safety shower or deluge water supply.

i. Establish an evacuation route.

j. Check for location of nearest fire alarm, stretcher, and fire extinguisher. Know all emergency telephone numbers.

3. Before leaving the job make necessary checks to see that equipment is secured or safe to operate. If the job is not completed, post suitable warning, tag and lock controls, and notify supervisors of subsequent shift. Clean up all protective equipment.

E. Hot Processing.

1. Deep frying and similar processes where hot shortening or grease is handled or used must have adequate safety procedures established. Training in safe methods is essential and supervision must be assured that the safe procedures and methods are followed and that equipment used will function in a safe manner.

2. Hand transferring of hot grease or similar materials shall be done with extreme care, using gloves or pads to protect hands, and quantities not to exceed 1 U.S. gallon. Eye protection should be worn. Other employees shall be excluded from the hazard area.

3. Ventilation hoods over frying areas shall be cleaned sufficiently to keep them relatively grease free. A 10 B.C. fire extinguisher shall be available in the immediate area.

4. Lard rendering and filtration shall be so arranged, guarded, and protected as to prevent the workers from being exposed to the hazards of burns.

5. Sanitation and housekeeping measures shall be sufficient to protect the health and well being of the employees. Rotted or putrefied products and diseased animal products shall not be handled unless the employee is protected from skin contact. Other protection may be needed, and if so shall be used.

R614-6-11. Boilers and Pressure Vessels.

Boilers and pressure vessels shall meet the requirements of Section 34A-7-102.

KEY: machinery, work-related diseases, boilers*

December 4, 1998	**34A-7-101**
Notice of Continuation November 2, 2007	**34A-7-102**
	34A-7-103
	34A-7-104
	34A-7-105
	34A-6-201 et seq.

R614. Labor Commission, Occupational Safety and Health.
R614-7. Construction Standards.
R614-7-1. Roofing, Tar-Asphalt Operations.

A. Roofing

1. Roofing employees shall be protected by adequate provisions from falling from roofs. These provisions may include:

2. When work is done on roofs which are more than sixteen (16) feet from the ground to the eaves, and where there is no parapet wall at the eaves, and such roof has a slope greater than four (4) inches in one (1) foot, a substantial catch platform or scaffold platform of sufficient width to extend at least two (2) feet beyond the outer edge of the eaves' projection shall be used.

3. As an alternative to such a platform, each person working on the roof shall be provided with a safety belt and life line securely fastened to a safe anchorage.

4. Roofs between six (6) and fifteen (15) feet from the ground to eaves and meeting other provisions above may be protected by a 2 x 4 or larger toeboard securely held at the work position or adequate roof jacks provided the slope does not exceed 12 inches in one (1) foot.

5. Roof ladders may also be used.

6. Workers on roofs having a slope greater than 12/12 pitch shall be protected with safety harnesses and life lines or by substantial roof ladders or other methods providing positive protection.

7. On oval shaped (dome) roofs a rope type of roof ladders is recommended. When the slope is greater than 2 to 1 (24 x 12) the employee shall be protected by life line or a fixed scaffold.

8. Roofing material and workers shall be distributed over the roof structure so as to prevent localized overloading.

9. Employees shall not carry loads exceeding 100 pounds on ladders, roofs or other elevated areas.

10. Employees shall not work on sloped roofs which are snow or ice covered except for the purpose of making same safe.

B. Hot roofing.

1. Protective clothing and equipment.

a. Roofers handling hot roofing materials shall be fully clothed including long sleeved shirts buttoned at the wrists. Other employees may wear no less than "T" shirts over their upper body.

b. Substantial shoes no less than six (6) inches in height, fully laced or secured shall be worn.

c. No gauntlet gloves shall be permitted. Wrist length gloves shall be worn.

d. Employees subjected to the possibility of splashing hot materials shall wear face shields or goggles.

2. Heating equipment.

a. All heating kettles shall be equipped with a temperature measring device in operating condition and the asphalt shall not be heated in excess of 50 degrees below the Flash Point.

b. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in safety precautions and in the proper methods of handling.

c. Attendants shall be within 100 feet of the kettle at all times while the burner flame is on.

d. Kettle heating equipment shall be installed and maintained in conformity with the American National Standards Institute Requirements for the fuel being used.

e. A fire extinguisher no smaller than 10 B-C rating shall be installed in close proximity to heating kettles.

f. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix.

3. Material handling.

a. Pump lines handling hot asphalt shall be positioned securely and equipped with a shut-off valve on each of a coupler which may be opened when lines are full.

b. Pump lines shall not be subjected to pressures in excess of the safe working pressure of the lines being used.

c. Hot asphalt shall not be carried up ladders but shall be pumped or hoisted.

d. Hoisting frames and equipment shall be installed in a safe manner, properly secured and positioned so that the operator has access to the bucket or container without subjecting himself to hazard.

e. Every tar bucket used by roofers or workers in similar trades shall be made of No. 24 gauge or heavier sheet steel and shall have a metal bail of no less than 1/4 inch diameter material. The bail shall be fastened to offset ears or the equivalent which have been riveted, welded or otherwise securely attached to the bucket. Soldered bail sockets are not permissible. Most paint buckets will not comply with these regulations.

f. Extreme caution shall be taken when working near sky lights or other roof holes.

g. Employees shall be positioned in such a manner that they cannot be struck by a bucket or other roofing material which may accidentally fall either while being hoisted, lowered or used in the roofing operation.

4. Flammable liquid with a flash point below 100 degrees F. (gasoline and similar products) shall not be used for cleaning purposes.

5. Workers shall not ride on top of loaded trucks or on running boards but shall be seated inside the cab of the vehicle.

6. Provisions of 29 CFR 1926.451 and 1926.1050 shall be complied with as applicable, covering scaffolds and ladders.

C. Asphalt mixing plants.

1. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in necessary precautions and in the proper methods of handling.

2. Suitable clothing and protective devices shall be worn by employees handling or applying asphalt and tar materials.

3. Positive care shall be taken to prevent heating materials above the flashpoint. Mixing operations shall be performed at the lowest practicable temperature.

4. Drums or other containers in which liquid bituminous materials are stored shall be kept tightly closed when not in use and shall be protected from sources of excess heat, sparks, and open flames.

5. A 10 B.C. fire extinguisher shall be provided at locations where heating devices or melting kettles are in use.

6. Asphalt or tar heating kettles when in use shall not be left unattended and shall be securely fastened to prevent accidental tipping. They shall be provided with a lid and thermometer.

7. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix. The use of gasoline or similar volatile materials as thinners is prohibited.

8. Where natural ventilation is insufficient at enclosed areas in which hot tar, asphalt, etc., are being heated or applied, an approved method of mechanical ventilation shall be provided. In addition, respirators shall be furnished to workers where required.

9. Heating, pumping, and application operations shall not be left unattended and an operator shall be stationed near the equipment to cut off flow or care for other emergencies.

10. Spraymen handling hot asphalt or tar shall not be allowed to work under hoses supplying hot materials to the sprays. Only flexible metallic hoses fitted with insulated handles shall be used in hand-spraying operations.

11. Form pins having mushroomed or split heads shall be discarded or effectively repaired.

12. Pipe lines which contain hot oil or asphalt shall be equipped with a shut-off valve on each side of a coupler which may be opened when lines are full.

R614-7-2. Grizzlies Over Chutes, Bins, and Tank Openings.

A. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute, or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

B. Employees shall not work on top of material stored or piled above chutes, draw holes or conveyor systems while material is being withdrawn unless protected.

C. Chutes, bins, drawholes, and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

D. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-7-3. Cranes and Derricks.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

R614-7-4. Residential-Type Construction, Raising Framed Walls.

A. Scope and Application

This section applies to work directly associated with the raising of framed walls in new buildings or structures in residential-type construction.

B. Definitions

1. "Residential-type Construction" means construction using the operations, methods, and procedures associated with residential and light commercial construction characterized by joists or trusses resting on stud walls and using wood and/or light gage steel frame construction.

2. "Bottom Plate" means the bottom horizontal member of a frame wall.

C. Standards For Raising Walls.

1. At no time during the raising of the framed wall shall an employee who is not performing the actual lift be allowed under the wall system unless a mechanical bracing system is in place to arrest the fall of a wall.

2. Before manually raising framed walls that are 10 feet or more in height, temporary restraints such as cleats on the foundation/floor system or straps on the wall bottom plate shall be installed to prevent inadvertent horizontal sliding or uplift of the framed wall bottom plate. Anchor bolts and/or toe nails, are not sufficient for use in blocking or bracing the framed wall.

3. Framed walls 18 feet or more in height shall be raised using mechanical lifting devices.

D. Standards For Training.

1. The employer shall provide a training program to employees engaged in raising framed walls. The program shall enable employees to recognize the hazards associated with raising framed walls and shall include procedures to minimize those hazards, including:

a. Where required by the standard, the use of and limitations to temporary restraints used to prevent inadvertent sliding and uplift on the bottom plate;

b. the use of mechanical lifting devises;

c. the use of mechanical bracing systems; and

d. the role of each employee involved in the raising of a framed wall.

KEY: safety

July 2, 2005 **34A-6**
Notice of Continuation November 2, 2007

R622. Lieutenant Governor, Administration.
R622-2. Use of the Great Seal of the State of Utah.
R622-2-1. Purpose.

(A) The Great Seal of the State of Utah is a symbol of the sovereignty of this state, and its use denotes authenticity of official state government functions and authority. The Great Seal is a single mounted engraved plate, comprising form and content as described in Section 67-1a-8, Utah Code. The purpose of this rule is to define how the state will:

(1) manage the use and application of the Great Seal (the seal); and

(2) define criteria for its authorized application.

R622-2-2. Primary Function of the Seal.

(A) Since its conception, the seal has been employed for specific governmental applications within the state's Executive, Legislative and Judicial Branches. The seal will be administered consistent with state law and policy, and its principal application shall be to authenticate or attest to:

(1) official documents which are authorized and/or required by statute; and

(2) other state documents having historic, civic, commemorative or educational value or import.

(B) The seal's impression on a legal document shall require the Lieutenant Governor's signature to appear on the same page as, and in proximity thereto.

R622-2-3. Custody and Use.

Pursuant to Section 67-1a-2(1)(d), (e), (f) of the Utah Code; the lieutenant governor shall ". . . keep custody of the Great Seal of the state of Utah; to keep a register of, and attest, the official acts of the governor; and to affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required."

R622-2-4. General Permitted Uses of the Seal.

(A) The seal shall be permitted for use without the written authorization of the Lieutenant Governor, in the following circumstances:

(1) printings of replicas of the seal on official state letterhead, business cards, and stationery for agencies, entities, or officers of the state, and

(2) exhibition of permitted reproductions of the seal on state flags.

(B) The seal shall be permitted for use in the following circumstances upon describing and submitting a list of intended uses with the lieutenant governor's office to assure uniformity and continuity of use:

(1) application or display of replicas of the seal by state agencies and state political sub-divisions which delineate official state purposes, and by state elected officials in connection with their official state business;

(2) for educational and academic uses by schools, colleges and universities to convey information about official state functions;

(3) for use on a product or article offered to the public, for profit or without charge, through the Utah State Capitol gift shop.

(4) Such uses shall not attempt to endorse, authenticate, recognize or promote persons or roles, or be part of administrative or promotional functions.

R622-2-5. Prohibited Usage.

(A) The seal, or replica, shall not be committed for general use, including:

(1) for personal financial gain;

(2) for, or in connection with, any advertising or promotion of any product, business, organization, service, or article whether offered for sale, for profit or without charge, except as provided in R622-2-4(B)(3);

(3) in a political campaign, or in ways that may legitimize or assist to defeat another candidate for elective office; or

(4) to function as, or be construed to function in any way as an endorsement of any business, organization, product, service or article.

(B) No symbol shall be used that imitates or appears similar to the seal in a way that intends to deceive, or is displayed in a manner that conveys improper use of the official Great Seal itself.

(C) When the seal is used, no mark, insignia, letter, word, figure, design, picture, or drawing of any nature may be placed upon the seal, or any part of it.

(D) A state agency, or an elected official, other than the lieutenant governor, shall not have authority to permit an individual or entity associated with a state agency or state elected official, to use the seal or replica for a commercial purpose whereby items will be distributed for sale, even though such purpose may include the providing of goods or services to the state.

(E) The seal shall not be displayed in a manner which lessens or detracts from its dignity or impact.

R622-2-6. Application For Use.

(A) Persons or entities seeking permission to use the seal or replica, excepting uses outlined in R622-2-4, will complete and file a legible application with the Lt. Governor, on a form provided by that office, which shall include:

(1) a specific description of the intended usage involving the Great Seal of the State of Utah, or replica of the seal,

(2) the payment of an administrative filing fee in the amount of $ 5.00, (non-refundable) and

(3) a precise description and specification of the actual product or item to bear the seal, or replica, in the form of an architectural drawing, engineering draft-to-scale, brochure, or lucid photograph or computer-graphic. The application, and supporting documents shall become the property of the lieutenant governor's office.

(B) Upon approval of a complete application, the applicant shall be issued a certificate bearing an identification number, by the lieutenant governor, which shall be kept by the applicant on file for four years following use of the seal. State agencies and entities which use the state seal or replica for official state functions have no application or fee requirement.

(C) An application may be denied for (1) failure to comply with relevant statutes or this rule, (2) failure to include the required fee, or (3) if the intended use is found to be detrimental to the image of the state and not in its best interest.

R622-2-7. Revocation of Approved Applications.

The lieutenant governor may revoke any prior approved usage if it is determined that the seal is being used improperly, if the actual use differs from the intended use as described on the application, or if false or inaccurate information was used to gain approval.

R622-2-8. Enforcement.

(A) Pursuant to Section 67-1a-7, Utah Code, except as otherwise provided by law, only the lieutenant governor, or the lieutenant governor's designee, is authorized to use or affix the seal to a document in pursuance of law. If any person illegally uses the seal, or such seal when defaced, the state may refer such criminal violations to an appropriate prosecuting authority.

(B) Under the provisions of Section 76-6-501, Utah Code, the state may seek redress against a person, or persons, who impermissibly replicate the seal as a forgery. A person or entity employing the seal, or a replica, with the intent to defraud or imply that the presence of the seal or replica appeared by permission of the state, or whose presentation of the seal

denigrates it's ability to authenticate by proper state authority, may be referred to an appropriate prosecuting authority.

KEY: great seal, lt. governor, state flag
November 21, 2007 **67-1a-7**
Notice of Continuation June 9, 2004 **67-1a-8**
67-1a-2
76-6-501

R628. Money Management Council, Administration.
R628-18. Conditions and Procedures for Use of Interest Rate Contracts.
R628-18-1. Authority.

This rule is issued pursuant to Section 51-7-18(2)(b)(viii).

R628-18-2. Purpose.

The purpose of this rule is to establish conditions and procedures for the use by public entities of Contracts (as defined in R628-18-3). This rule does not cover instruments such as futures, options, (other than options to enter into swaps), calls or puts entered into for investment purposes, as they are not legal investments under the Act. This rule provides criteria for the use of Contracts, permitted contract terms and the type of contract form to be used. This rule also provides credit criteria for depository institutions, broker dealers, insurance companies and other entities that are counterparties to Contracts, reporting requirements on Contracts and penalties for violation of this rule.

R628-18-3. Definitions.

For purposes of this rule:

(1) Contract(s) means: interest rate exchange or swap contracts, cash flow exchange or swap contracts, any derivatives of these contracts including forward swaps and options to enter into swaps, and interest rate floors, caps and collars that are entered into by a public entity.

(2) Counterparty means: any party to a Contract who has obligations or rights thereunder.

(3) Governing Board means: the board, town council, city council, etc. of a public entity which would oversee the issuing of debt and the management of that debt.

(4) Intermediary Contract means: A Contract that is structured such that any payment owed by any counterparty to any other counterparty is to be made through a person or entity that is not a counterparty to the Contract, where the funds constituting such payment are either, (i) subject to the control of such person or entity; or (ii) subject to execution by the creditors of such person or entity.

(5) Intermediary means: a person or entity that is not a counterparty to a given Intermediary Contract through whom any payment is to be made by a counterparty to any other counterparty as contemplated under the immediately preceding subsection (4).

(6) Notional Amount means: the dollar amount against which a rate is applied to determine the dollar amount payable or receivable by a counterparty under a Contract.

R628-18-4. General Requirements.

Contracts shall be entered into only under the following conditions:

(1) The Governing Board shall first determine that the Contract or arrangement or a program of Contracts: (a) is designed to reduce the amount or duration of payment, rate, spread or similar risk, or (b) is reasonably anticipated to result in a lower cost of borrowing.

(2) Contracts are to be used for the control or management of debt or the cost of servicing debt and not for speculation.

R628-18-5. Credit Criteria Restriction on Counterparties.

Public entities may enter into contracts only with the following counterparties:

(1) Any in-state depository institution that meets the criteria of a qualified depository as described in Sections 51-7-3(21), 51-7-18.1 and R628-12.

(2) Any out-of-state depository institution that meets the criteria of R628-10.

(3) Any broker dealer that: (i) is either a primary reporting dealer recognized by the Federal Reserve Bank of New York or meets the criteria of R628-16-6(B)(5) and (6), without regard to whether the broker dealer has applied for certification or been certified as contemplated under R628-16, and (ii) is rated, or whose parent company is rated, in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(13).

(4) Any insurance company whose claims paying ability is rated or that has issued currently outstanding debt that is rated in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(13).

(5) Any entity that is directly or indirectly wholly owned by an entity or entities described in any of the immediately preceding subsections (1) through (4).

(6) Any entity that is directly or indirectly wholly owned by a holding company or parent company which directly or indirectly wholly owns any entity described in the immediately preceding subsections (1) through (4).

(7) Any entity in the business of entering into Contracts that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(13), provided that if a public entity enters into a Contract under authority of this Subsection (7), the Contract's final maturity may not exceed eighteen years if the counterparty is not rated in the highest rating category for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(13), and may not exceed nine years if the counterparty is not rated in one of the two highest rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(13).

(8) Any entity whose obligations under the Contract with the public entity are fully and unconditionally guaranteed by an entity that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(13), provided that if a public entity enters into a Contract under authority of this Subsection (8), the Contract's final maturity may not exceed eighteen years if the counterparty's guarantor is not rated in the highest rating category for two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(13), and may not exceed nine years if the counterparty's guarantor is not rated in one of the highest two rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(13).

R628-18-6. Authorized Intermediaries.

A public entity shall not enter into an Intermediary Contract unless each Intermediary thereunder is either:

(1) a qualified depository as defined in Subsection 51-7-3(21);

(2) a permitted depository as defined in Subsection 51-7-3(17); or

(3) a certified dealer as defined in Subsection 51-7-3(1).

R628-18-7. Terms of the Contract and Type of Contract.

(1) To eliminate speculation, the Notional Amount of a Contract cannot exceed 115 percent of the par amount of the debt to which such Contract relates. Nothing in these rules shall be deemed to prohibit a public entity from entering into a subsequent Contract to reverse a position taken in a prior Contract so long as the subsequent Contract otherwise complied with these rules.

(2) The final termination date of a Contract shall not be later than 90 days past the final maturity of the debt to which

such Contract relates.

(3) The public entity must use an industry standard contract form approved by the International Swap Dealers Association, which is currently headquartered in New York City, New York (ISDA), but may make such modifications thereto as are contemplated or permitted by the ISDA form or any ISDA code incorporated therein.

R628-18-8. Reporting Requirements and Penalty for Violation by a Public Treasurer.

(1) Pursuant to Subsection 51-7-18.2(2)(d), the public treasurer of each public entity that is a party to any outstanding Contract must submit a report to the council within 30 days after June 30 and December 31 of each year containing the following information as of the immediately preceding June 30 or December 31, as applicable:

(a) A listing of all outstanding Contracts to which the public entity is a party;

(b) the Notional amount of each Contract, if applicable;

(c) the underlying debt to which each Contract relates;

(d) the type of each Contract e.g., interest rate exchange or swap contract, cash flow exchange or swap contract or, if the Contract is a derivative of the foregoing, forward swap, option to enter into a swap, floor, cap, collar, or other derivative; and

(e) a description of the basis upon which the public entity's payment obligations are determined under each Contract.

(2) Any public entity that willfully violates the provisions of this rule is guilty of a Class A misdemeanor.

(3) Any public entity that knowingly makes or causes to be made a false statement or report to the council is guilty of a Class A misdemeanor.

KEY: interest rate swaps*, contracts, public finance, bonds
July 3, 1995 51-7-18(2)(b)(viii)
Notice of Continuation November 6, 2007

R638. Natural Resources, Geological Survey.
R638-2. Renewable Energy Systems Tax Credits.
R638-2-1. Purpose.

(A) This rule implements the responsibilities assigned to the Utah Geological Survey (UGS) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(C) This rule also establishes procedures for taxpayers to use when applying for UGS certification of tax credit eligibility and tax credit amounts, and for UGS to follow in reviewing such applications.

(D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R638-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the UGS and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, UGS is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or production of energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the UGS may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, UGS may also establish rules defining the reasonable costs of a system.

R638-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;

b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and

c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

a. material from a plant or tree; or

b. other organic matter that is available on a renewable basis, including:

i. slash and brush from forests and woodlands;

ii. animal waste;

iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;

iv. aquatic plants; and

v. agricultural products.

2. A biomass system does not include:

a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants

b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to $50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange

equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32. This can include ground source heat pumps and water source heat pumps using ground water or surface water.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10-1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and

2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10-1106(2)(b) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7-614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;

2. Biomass except for systems combusting biomass for heat;

3. Direct-use geothermal;

4. Geothermal electricity

5. Geothermal heat pump;

6. Hydroenergy;

7. Passive solar for heating or cooling;

8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to $2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

(Y) "USEP" means that Utah State Energy Program, a subdivision of the Utah Geological Survey, which is responsible for certifying tax credits specified under this rule.

(Z) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(AA) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R638-2-4. Investment Tax Credit Certification Process.

(A) The Utah State Energy Program (USEP), a subdivision of the UGS, is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by USEP to gather information necessary to implement this rule.

(C) USEP will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, USEP reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, USEP may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, USEP finds that a renewable energy system is eligible for a residential or commercial tax credit, USEP will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only USEP may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of USEP's evaluation of an application, USEP will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;

2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or

3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63-46b-12 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section 63-46b-13.

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;

2. The tax identification number or numbers of persons seeking a tax credit;

3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit USEP staff to locate the site for on-site verification of the information in the application.

4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.

(H). Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that USEP staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.

2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.

3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow UGS to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R638-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of $50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed $50,000 for any single commercial unit.

(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of $2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed $2,000.

(C) Eligible costs for equipment are generally limited to system components that are both:

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end-use; and

2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or

2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) USEP may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R638-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R638-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional hot water heating system.

Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems."

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar ration values ($kWh/M^2/day$). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF;

2. Fixed collectors shall be oriented within 15 degrees of true south.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than $0.15 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($0.15 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($0.15 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel active solar thermal system exceeds $0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than $0.27 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($0.27 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($0.27 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel solar thermal system exceeds $0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

R638-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(A) All eligible costs for solar PV energy systems must conform with Section R638-2-5, above. Solar PV energy systems must also meet the requirements in this Section.

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);

2. Inverter;

3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:
1. Batteries;
2. Battery wiring;
3. Charge controllers; and
4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:
1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:
http://www.consumerenergycenter.org/cgi-bin/eligible_pvmodules.cgi; or
2. The applicant can demonstrate to USEP that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:
1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:
http://www.consumerenergycenter.org/cgi-bin/eligible_inverters.cgi; or
2. The applicant can demonstrate to USEP that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of $2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:
1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;
2. Positioned so as to optimize the average annual solar radiation values (kWh/M^2/day). Guidance for siting may be found at the the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:
http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF);
3. Positioned such that fixed modules and/or arrays are oriented within 15 degrees of true south.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:
1. A Utah licensed electrical contractor (S200);
2. A Utah licensed solar photovoltaic contractor (S202);
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or
4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than $10 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
1. For a residential tax credit application with total pre-rebate eligible costs exceeding $10 per watt of capacity, the amount of the tax credit shall be calculated as follows:
Tax credit granted = (($10 x rated output capacity in watts) - rebates) x 0.25
2. For a commercial tax credit application with total eligible costs exceeding $10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:
Tax credit granted = (($10 x rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than $13 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
1. For a residential tax credit application with total pre-rebate eligible costs exceeding $13 per watt of capacity, the amount of the tax credit shall be calculated as follows:
Tax credit granted = (($13 x rated output capacity in watts) - rebates) x 0.25
2. For a commercial tax credit application with total eligible costs exceeding $13 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:
Tax credit granted = (($13 x rated output capacity in watts) - rebates) x 0.10

R638-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:
1. A means to allow the solar energy to enter the system;
2. A heat-absorbing surface;
3. A thermal storage mass located within the conditioned

space;

4. A heat transferral system or mechanism and;

5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:

1. Trombe wall;

2. Water wall;

3. Thermosyphon;

4. Equipment or building shell components providing direct heat gain; and

5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U-factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:

1. For a non-loaded structure, 100% of the cost may be eligible;

2. For a loaded structure, 50% of the cost may be eligible;

3. Nothwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit is calculated.

(G) No tax credit shall be given if USEP concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R638-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R638-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

1. Listed as eligible under the California Emerging Renewables Program in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_smallwind.cgi; or

2. The applicant can demonstrate to USEP that the turbine meets standards that are equivalent to those of the California Emerging Renewables Program as of calendar year 2007.

(C) Inverters and charge controllers must by certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:

a. Buildings;

b. Utility poles or overhead utility lines;

c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.

2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:

a. Trees or other vegetation;

b. Buildings and other structures;

c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that SEP can verify appropriate siting. SEP also reserves the right to conduct a site visit to verify appropriate siting.

(F). Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than $5 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $5 per watt of capacity, the

amount of the tax credit shall be calculated as follows:

Tax credit granted = (($5 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($5 x rated output capacity in watts) - rebates) x 0.10

R638-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R638-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;

2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or

3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or

4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Accredited Installer" by the International Ground Source Heat Pump Association (IGSHPA).

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a provisional well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a geothermal heat pump system is considered to be no higher than $4,000 per ton of output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $4,000 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($4,000 x rated output capacity in tons) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $4,000 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($4,000 x rated output capacity in tons) - rebates) x 0.10

3. If the cost of a geothermal heat pump system exceeds $4,000 per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

R638-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R638-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah; or

2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R638-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

R638-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R638-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;
2. Generator;
3. Rectifier;
4. Inverter;
5. Penstocks;
6. Penstock ventilation;
7. Buck and boost transformer;
8. Valves;
9. Drains;
10. Diversion structures (with the exception of storage dams, fish facilities, and canals);
11. Screened intake device; and
12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;
2. Battery temperature sensors;
3. Charge controller and necessary wiring and disconnects;
4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a hydroenergy system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R638-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;

2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;

3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);

4. Engines or turbines used to power generators;

5. Generators;

6. Inverters;

7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(F) Grid connected systems must meet all interconnection

standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or

2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to USEP for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;

2. Wind energy systems; or

3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to USEP:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;

2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;

3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;

4. Information on the location of the commercial energy system sufficient to permit site inspection by USEP staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;

5. Photographs of key and/or representative components of the commercial energy system;

6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;

7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, USEP staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. USEP may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) USEP will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, USEP will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63, Chapter 46b (Administrative Procedures Act), upon its decision to grant or deny a certification request, USEP will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R638-2-16. Granting of Production Tax Credits.

(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, USEP must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to USEP information regarding the following:

1. The date that the commercial energy system first entered commercial service;

2. The beginning and ending dates of the company's tax year;

3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by USEP.

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to USEP invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. USEP will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, USEP will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;

2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;

3. The number of kilowatts deemed to be valid;

4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) A company claiming a production tax credit must submit the information specified above to USEP on or before the date the tax return on which the credit is claimed is required to be filed with the State Tax Commission. Once USEP has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either USEP or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63-46b-12 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section 63-46b-13.

(G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC 63-2-304 (1) and/or UC 63-2-304 (2) when the applicant provides USEP with a written claim of confidentiality and a concise statement supporting the claim, consistent with UC 63-2-308 (1)(a)(i). USEP shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.

KEY: energy, renewable, tax credits, solar
October 23, 2007 **59-7-614**
59-10-1014
59-10-1106

R641. Natural Resources; Oil, Gas and Mining Board.
R641-100. General Provisions.
R641-100-100. Scope of Rules.

These rules will be known as "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining" and will govern all proceedings before the Board of Oil, Gas and Mining or any hearing examiner designated by the Board. These rules provide the procedures for formal adjudicative proceedings. The rules for informal adjudicative proceedings are in the Coal Program Rules, the Oil and Gas Conservation Rules and the Mineral Rules.

R641-100-200. Definitions.

For the purpose of these rules, the following definitions shall apply:

"Adjudicative proceeding" means a Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code Annotated (1953, as amended) shall not be included within this definition.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a hearing examiner for its hearings in accordance with these rules. Unless the context of these rules requires otherwise, references to the Board shall be deemed to refer to the hearing examiner when so appointed.

"Division" means the Utah Division of Oil, Gas and Mining.

"Intervenor" means a person permitted to intervene in a proceeding before the Board.

"Legally Protected Interest" means the interest of any "owner" or "producer" as defined in Section 40-6-2 Utah Code Annotated (1953, as amended), or as defined by the rules of the Board.

"Party" means the Board, Division or other person commencing a proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in a proceeding.

"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.

"Petitioner" means a person who requests the initiation of any proceeding (Request for Agency Action).

"Proceeding" means an adjudicative proceeding or other proceeding.

"Respondent" means any person against whom a proceeding is initiated or whose property interests may be affected by a proceeding initiated by the Board or any other person.

"Staff" means the Division staff. The Staff will have the same rights as other parties to the proceedings.

R641-100-300. Liberal Construction.

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board.

R641-100-400. Deviation from Rules.

When good cause appears, the Board may permit a deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary or in the furtherance of justice or the statutory purposes of the Board. Notwithstanding this, in no event may the Board permit a deviation from a rule when such rule is mandated by law.

R641-100-500. Utah Administrative Procedures Act.

All rights, powers and authority described in Title 63, Chapter 46b, "Utah Administrative Procedures Act," of the Utah Code Annotated (1953, as amended), are hereby reserved to the Board. These rules shall be construed to be in compliance with the Utah Administrative Procedures Act.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-101. Parties.
R641-101-100. Division as a Party.

The Division will be considered a party to a proceeding before the Board or its designated hearing examiner.

R641-101-200. Rights of Parties.

Subject to such limitations as the Board will impose in the interests of conducting orderly and efficient proceedings, each party to a proceeding will be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the proceeding.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-102. Appearances and Representations.
R641-102-100. Natural Persons.

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the Board.

R641-102-200. Attorneys.

Except as provided in R641-102-100, representation at hearings before the Board will be by attorneys licensed to practice law in the state of Utah or attorneys licensed to practice law in another jurisdiction which meet the rules of the Utah State Bar for practicing law before the courts of the State of Utah.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-103. Intervention.
R641-103-100. Order Granting Leave to Intervene Required.

Any person, not a party, desiring to intervene in a formal proceeding will obtain an order from the Board granting leave to intervene before being allowed to participate. The hearing examiner shall not have the authority to grant a leave to intervene. Such order will be requested by means of a signed, written petition to intervene which shall be filed with the Board by the Response Date and copy promptly mailed to each party by the petitioner. Any petition to intervene or materials filed after the date a response is due under R641-105-200 may be considered at the Board's next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

110. Content of Petition. Petitions for leave to intervene must identify the proceeding by title and by docket and cause number, to the extent determinable. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the Board.

120. Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response will state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

130. Granting of Petition. The Board shall grant a petition for intervention if it determines that:

131. The petitioner's legal interests may be substantially affected by the formal adjudicative proceedings, and

132. The interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

140. Order Requirements.

141. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

142. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

143. The Board may impose conditions at any time after the intervention.

144. If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation therein, the Board may dismiss the intervenor from the proceeding.

145. In the interest of expediting a hearing, the Board may limit the extent of participation from an intervenor. Where two or more intervenors have substantially like interests and positions, the Board may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-104. Pleadings.
R641-104-100. Pleadings Enumerated.

Pleadings before the Board will consist of a Notice of Agency Action, a Request for Agency Action (also referred to herein as a "petition"), responses, and motions, together with affidavits, briefs and memoranda of law and fact in support thereof.

120. Initiation. Except as otherwise permitted by R641-109-400 regarding emergency orders, all adjudicative proceedings shall be commenced by either:

121. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

122. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

130. Notice of or Request for Agency Action. A Notice of Agency Action and a Request for Agency Action shall be filed and served according to the following requirements:

131. Notice of Agency Action. A Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board; or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

131.100 The names and mailing addresses of all respondents and other persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

131.200 The name of the proceeding and the file number or other reference number;

131.300 The date that the Notice of Agency Action was mailed;

131.400 A statement that such proceeding is to be conducted formally according to the provisions of these rules and Sections 63-46b-6 to 63-46b-11 of the Utah Code Annotated (1953, as amended), if applicable;

131.500 If a response is required, a statement that a written response must be filed within 20 days of the mailing date of the Notice of Agency Action;

131.600 A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

131.700 A statement of the legal authority and jurisdiction under which the proceeding is to be maintained;

131.800 The name, title, mailing address, and telephone number of the Board and the Division; and

131.900 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Board or Division, the questions to be decided.

132. Unless Waived, the Division shall:

132.100 Mail the Notice of Agency Action to each party; and

132.200 Publish the Notice of Agency Action if required by statute or rule.

133. Persons other than the Board or Division may petition for Board action. Such request may be for rulemaking, an appeal of a Division determination in an adjudicative proceeding before the Division, a right, permit, approval, license, authority or other affirmative relief from the Board. That petitioner's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Board, or by his or her attorney, and shall include:

133.100 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

133.200 A space for the Board's file number or other reference number;

133.300 The name of the proceeding, if known;

133.400 Certificate of mailing of the Request for Agency Action;

133.500 A statement of the legal authority and jurisdiction under which Board action is requested;

133.600 A statement of the relief sought from the Board; and

133.700 A statement of the facts and reasons forming the basis for relief.

134. Two or more grounds of complaint concerning the same subject matter may be included in one Request for Agency Action (petition) but should be numbered and stated separately. Two or more petitioners may join in one request if their respective complaints are against the same person and deal substantially with the same violation of law, rule, regulation or order of the Board.

135. A Request for Agency Action and other pleadings shall be in the form prescribed in R641-104-200. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

136. After receiving a Request for Agency Action, the Division shall, unless waived, insure that notice by mail has been given to all parties. The Division shall also provide notice by publication if required by below. The written notice shall:

136.100 Give the Board's file number or other reference number;

136.200 Give the name of the proceeding;

136.300 Designate that the proceeding is to be conducted formally according to these rules and the provisions of Sections 63-46b-6 to 63-46b-11 of the Utah Code Annotated (1953, as amended), if applicable;

136.400 If a response is required, state that a written response must be filed within twenty (20) days of the mailing or publication date of the Request for Agency Action;

136.500 State the time and place of the hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

136.600 Give the name, title, mailing address, and telephone number of the Board and Division.

137. If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Board may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

140. Responses.

141. In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his/her representative with twenty (20) days of the mailing date of the Notice of Agency Action or the Request for Agency Action that shall include:

141.100 The Board's file number or other reference number;

141.200 The name of the adjudicative proceeding;

141.300 A statement of the relief that the respondent seeks;

150. Default.

151. The Board may enter an order of default against a party if:

151.100 A party fails to attend or participate in a hearing; or

151.200 A respondent fails to file a response under R641-140 above.

152. The order shall include a statement of the ground for default and shall be mailed to all parties.

153. 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.

154. After issuing the order of default, the Board shall conduct any further proceedings necessary to complete the

proceeding without the participation of the party in default and shall determine all issues in the proceeding, including those affecting the defaulting party.

160. Motions. Motions may be submitted for the Board's decision on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion will be accompanied by a supporting memorandum of fact and law.

170. Exhibits. Exhibits will be clearly marked to show the docket and cause numbers, the party proffering the exhibit, and the number of the exhibit.

R641-104-200. Form.

210. Request for Agency Action (petition) will contain a title which will be substantially in the following form:

TABLE

BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

In the Matter of the Request for Agency Action of John Doe, Petitioner for	Docket No. Cause No.

or

TABLE

BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

John Doe,	Petitioner,	Request for Agency Action
v.		Docket No.
Richard Doe,	Respondent.	Cause No.

220. Docket and Cause Number. Upon the filing of a Request for Agency Action (petition), the secretary of the Board will assign a docket and a cause number to the matter. The secretary will enter the docket and cause numbers for the matter, together with the date of filing, on a separate docket provided for that purpose. Thereafter, all pleadings offered in the same proceeding will bear the docket and cause numbers assigned and will be noted with the filing date upon the docket page assigned.

230. Content and Size of Pleadings. Pleadings should be double-spaced and typed on plain, white, 8-1/2" x 11" paper. They must identify the proceeding by title and by docket and cause number, if known. All pleadings will contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought.

240. Amendments to Pleadings. The Board may, upon motion of the responsible party made at or before the hearing, allow any pleadings to be amended or corrected. Defects which do not substantially prejudice any of the parties will be disregarded.

250. Signing of Pleadings. Pleadings will be signed by the party or the party's attorney and will show the signer's address and telephone number. The signature will be deemed to be a certification by the signer that he or she has read the pleading and that, he or she has taken reasonable measures to assure its truth.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-105. Filing and Service.
R641-105-100. Requests for Agency Action (Petitions).

All Requests for Agency Action filed by the 10th day of each calendar month may be considered by the Board for inclusion in the schedule of matters to be heard at its regularly scheduled meeting during the following calendar month. At the time the request is filed, petitioner will also file any motions, affidavits, briefs, or memoranda intended to be offered by petitioner in support of said petition or motion. Petitioner will file with the petition a list of the names and last known addresses of all persons required by statute to be served or whose legally protected interest may be affected thereby. This rule will apply to all matters initiated by the Board on its own motion as well as to statements, briefs, or memoranda in support thereof prepared by the Division or by the Staff. Any petition or other materials filed after the 10th day of any calendar month may be considered by the Board at its regularly scheduled meeting during the following month only upon separate motion of petitioner made at or before the hearing for good cause shown.

R641-105-200. Responses.

All responses to petitions, responses to motions by petitioner, and motions by respondent, together with all affidavits, briefs, or memoranda in support thereof, filed by the 10th day of the month or two weeks before the scheduled hearing, whichever is earlier, in the month in which the hearing on the matter is scheduled (the "Response Date") may be considered by the Board at its regularly scheduled meeting during that month. This rule will apply to all statements, briefs, or memoranda prepared by the Division or by the Staff in response to any petition or motion by petitioner. Any responses or other materials filed after the Response Date may be considered at the Board's regularly scheduled meeting for that month only upon separate motion of respondent made at or before the hearing for good cause shown.

R641-105-300. Motions.

All motions or responses to motions available to a petitioner or respondent at the time his or her Request for Agency Action or response is filed will be filed and served with the petition or response as provided in R641-105-100 and R641-105-200. Subsequent written motions, other than motions for exceptions to the filing requirements of these rules, must be filed by the time the response is due under R641-105-200. Oral responses and written responses to motions may be presented or filed at or before the hearing. Oral motions and responses to oral motions may be presented at the hearing.

R641-105-500. Exhibits.

Any exhibits intended to be offered by petitioners will be filed at least thirty days prior to the date of the hearing for which the exhibits are intended. Respondents and intervenors will supply exhibits with their respective pleadings. Any exhibits intended to be offered by the parties in rebuttal of evidence presented at the hearing will be presented at the hearing. The Board, on its own motion, may order the continuance of any proceeding until the next regularly scheduled meeting of the Board in order to allow adequate time for the Staff to evaluate any evidence presented during the hearing.

R641-105-600. Place of Filing.

An original and 14 copies of all pleadings, affidavits, briefs, memoranda and exhibits will be filed with the secretary of the Board. The Board may direct any party to provide additional copies as needed.

R641-105-700. Temporary Procedural Rulings.

The Chairman or designated Acting Chairman of the Board may issue temporary rulings on procedural motions that arise between Board hearings dates. These rulings will be reviewed and decided upon by the Board at its next regularly scheduled meeting.

R641-105-800. Computation of Time.

In computing any period of time prescribed or allowed by these rules, or by the Board, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays, or legal holidays will be excluded in the computation.

KEY: administrative procedure
October 1, 2001 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-106. Notice and Service.
R641-106-100. Notice.

Except as otherwise provided by law, before any rule, regulation, or order, or amendment thereof, will be made by the Board, notice of a hearing thereon will be given by publication in a newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah, and in any newspapers of general circulation published in the county where the land affected or some part thereof is situated. Such notice will be issued in the name of the state and will be signed by the Board or its secretary. The notice will specify the title and docket and cause numbers of the proceeding, the time and place of hearing and whether the case is set for hearing before the Board or its designated hearing examiner. The notice will briefly state the purpose of the proceeding and general nature of the order, rule, or regulation to be promulgated or effected. The notice will also state the name(s) of the petitioner and respondent, if any, and, unless the order, rule, or regulation is intended to apply to and affect the entire state, the notice will specify the land or resource affected by such order, rule, or regulation. In addition to published notice, the Board will give notice by mail to all parties. Such notice will be given by the 1st day of the month in which the hearing is held, but in no event less than fifteen days before the hearing.

R641-106-200. Personal Service of Request (Petition) and Related Pleadings.

210. In addition to the notice required by R641-106-100, wherever personal service is required by applicable law, the petitioner, or the Board in any proceeding initiated by the Board, will personally serve a copy of the petition and all pleadings filed with the secretary of the Board at the same time as the petition, other than exhibits, on any person required by statute to be served and on any respondent. The Board, on its own motion, may at any time also require petitioner to effect personal service on any other person whose legally protected interests may, in the opinion of the Board, be affected by the proceedings. In such event the Board will prescribe the schedule for service of the request and any response thereto.

220. Personal service under this rule will be accomplished no later than the 15th day of the month preceding the month in which the first hearing in the matter is held.

230. Personal service may be made by any person authorized by law to serve summons in the same manner and extent as is provided by the Utah Rules of Civil Procedure for the service of summons in civil actions in the district courts in this state. Proof of service will be in the form required by law with respect to service of process in civil actions. Persons otherwise entitled to personal service under these rules may be served by publication or mail in accordance with Rule 4(f) of the Utah Rules of Civil Procedure. In such a case, any member of the Board may consider ex parte and rule upon the verified motion of any person seeking to accomplish service by publication or mail.

R641-106-300. Service of Other Pleadings.

A copy of all pleadings filed subsequent to the Request for Agency Action or Notice of Agency Action, which are not required to be personally served pursuant to R641-106-200, will be served by mailing a copy thereof, postage prepaid, to all parties at the same time such pleadings are filed with the secretary of the Board. Exhibits need not be served on all parties, but may be examined by any party during the normal business hours of the Division by arrangement with the secretary of the Board.

R641-106-400. Service on Attorney or Representative.

When any party has appeared by attorney or other authorized representative, service upon such attorney or representative constitutes service upon the party he or she represents.

R641-106-500. Proof of Service.

There will appear on all documents required to be served a certificate of service in substantially the following form:

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid, to).

Dated at , this day of , 19 .

Signature

or

I hereby certify that I have this day served the foregoing document by publication of a notice thereof in the (name of newspaper), a newspaper of general circulation in Salt Lake City and County and in (name of newspaper(s)), (a) newspaper(s) of general circulation in the County of . Copies of the notices are attached to this certification.

Dated at , this day of , 19 .

Signature

R641-106-600. Additional Notices Upon Request.

Any person desiring notification by mail from the Board or the Division of all matters before the Board will request the same in writing by filing with the Board or Division his or her name and address and designating the area or areas in which he or she has an interest and in which he or she desires to receive such notice. The Division may designate an annual fee, payable in advance, for such notice.

R641-106-700. Continuance of Hearing Without New Service.

Any hearing before the Board held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published. In the event of any continuance, a statement thereof will be made in the record of the hearing which is continued. If a hearing (not the deliberation or decision) is continued indefinitely, the Board will provide new notice in accordance with these rules before hearing the matter.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-107. Prehearing Conference.
R641-107-100. Conference.

The Board, may in its discretion, on its own motion or motion of one of the parties made on or before the date the response is due, direct the parties or their representatives to appear at a specified time and place for a prehearing conference. At the conference, consideration will be given to:

110. Simplification or formulation of the issues;

120. The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents;

130. Limitation of the number of expert witnesses;

140. Arranging for the exchange of proposed exhibits or prepared expert testimony; and

150. Any other matters which may expedite the proceeding.

R641-107-200. Order.

The Board will issue an order based upon its own findings or upon the recommendation of its designated hearing examiner, which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order will control the subsequent course of the proceeding before the Board unless modified by subsequent order for good cause shown.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-108. Conduct of Hearings.
R641-108-1. Conduct of Hearings.

Except as may otherwise be provided by law, hearings before the Board will be conducted as follows:

R641-108-100. Public Hearings.

All hearings before the Board will be open to the public, unless otherwise ordered by the Board for good cause shown. All hearings shall be open to all parties.

101. Full Disclosure. The Board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

R641-108-200. Rules of Evidence.

The Board shall use as appropriate guides the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objections of a party, the Board:

201. May exclude evidence that is irrelevant, immaterial, or unduly repetitious.

202. Shall exclude evidence privileged in the courts of Utah.

203. May receive documentary evidence in the form of a copy of excerpt if the copy or excerpt contains all pertinent portions of the original document.

204. May take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record or other proceedings before the Board, and of technical or scientific facts within the Board's specialized knowledge.

R641-108-300. Testimony.

Testimony presented to the Board in a hearing will be sworn testimony under oath or affirmation.

R641-108-400. Failure to Appear.

When a party to a proceeding fails to appear at a hearing after due notice has been given, the Board may dismiss or continue the matter or decide the matter against the interest of the party who fails to appear.

R641-108-500. Order of Presentation of Evidence.

Unless otherwise directed by the Board at the hearing, the order of procedure and presentation of evidence will be as follows:

510. Hearings upon Petition:
511. Petitioner
512. Respondent, if any
513. Staff
514. Intervenors
515. Rebuttal by Petitioner
520. Hearings upon motion of the Board:
521. Staff
522. Respondent
523. Rebuttal by Staff

R641-108-600. Oral Argument and Briefs.

Upon the conclusion of the taking of evidence, the Board may, in its discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the Board.

R641-108-700. Record of Hearing.

The Board will cause an official record of the proceedings to be made in all hearings as follows:

710. The record may be made by means of a certified shorthand reporter employed by the Board or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Board chooses not to employ the reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing will be filed with the Board. Parties desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

720. The record of the proceedings may also be made by means of a tape recorder or other recording device if the Board determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter.

730. If the Board deems it unnecessary, it will not have the record of a hearing transcribed unless requested to do so by a party. Whenever a transcript or tape recording of a hearing is made, it will be available at the office of the Board for the use of the parties, but may not be withdrawn therefrom.

R641-108-800. Summons and Fees.

810. Summons. The Board may issue summons on its own motion or upon request of a party for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other evidence.

820. Witness Fees. Each witness who appears before the Board will be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, which amount will be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the Board will be paid from the funds appropriated for the use of the Board. Any witness summoned by a party other than the Board may, at the time of service of the summons, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness will not be required to appear.

R641-108-900. Discovery.

Upon the motion of a party and for good cause shown, the Board may authorize such manner of discovery against another party, including the Division or the Staff, as may be prescribed by and in the manner provided by the Utah Rules of Civil Procedure.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-109. Decisions and Orders.
R641-109-100. Board Decision.

Upon reaching a final decision in any proceeding, the Board will prepare a decision to include findings of fact, conclusions of law, and an order. The Board may direct the prevailing party to prepare proposed findings of fact, conclusions of law, and an order, which will be completed within five days of the direction, unless otherwise instructed by the Board. Copies of the proposed findings of fact, conclusions of law, and order will be served by the prevailing party upon all parties of record before being presented to the Board for signature. Notice of objection thereto will be submitted to the Board and all parties of record within five days after service.

R641-109-200. Entry of Order.

The Chairman or designated Acting Chairman of the Board will sign the order on any matter no later than 30 days following the end of the hearing on that matter, and cause the same to be entered and indexed in books kept for that purpose. The order will be effective on the date it is signed, unless otherwise provided in the order. Upon petition of a person subject to the order and for good cause shown, the Board may extend the time for compliance fixed in its order.

R641-109-300. Notice.

The Board will notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law will be delivered or mailed to each party.

R641-109-400. Emergency Orders.

Notwithstanding the other provisions of these regulations, the Director of the Division or any member of the Board is authorized to issue an emergency order without notice or hearing, in accordance with the applicable statute. The emergency order will remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as will be prescribed by statute.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-110. Rehearing and Modification of Existing Orders.
R641-110-100. Time for filing.

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

R641-110-200. Contents of Petition.

A petition for rehearing will set forth specifically the particulars in which it is claimed the Board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

R641-110-300. Response to Petition.

All other parties to the proceeding upon which a rehearing is sought may file a response to the petition at any time prior to the hearing at which the petition will be considered by the Board. Such responses will be served on the petitioner at or before the hearing.

R641-110-400. Action on the Petition.

The Board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the Board within such time, the petition will be deemed to be denied. The Board may set a time for a hearing on said petition or may summarily grant or deny the petition.

R641-110-500. Modification of Existing Orders.

A request for modification or amendment of an existing order of the Board will be treated as a new petition for purposes of these rules.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-111. Declaratory Rulings.
R641-111-100. Petition for Declaratory Rulings.

Any person may by a Request for Agency Action filed in accordance with these rules, petition the Board for a declaratory ruling on the applicability of any statute, rule, regulation or order to the operations or activities of that person. The petition will include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute or rule or regulation involved.

R641-111-200. Ruling.

The Board will consider the petition, and will:

210. Notify the person that no declaratory ruling will be issued;

220. Issue a nonbinding declaratory ruling; or

230. Decide that a binding declaratory ruling affecting the petitioner or any other person may be proper, and initiate a proceeding under R641-104 which will be conducted according to these rules.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-112. Rulemaking.
R641-112-1. Rulemaking.

The Board will promulgate rules using the procedure described in the "Utah Administrative Rulemaking Act," Section 63-46a-1 et seq. and under the authority provided at Sections 40-6-5, 40-8-6(1), and 40-10-6(1).

KEY: administrative procedure
1994 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-113. Hearing Examiners.
R641-113-100. Designation of Hearing Examiner.

The Board may, in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusions of law to the Board. Any member of the Board, Division Staff, or any other person designated by the Board may serve as a hearing examiner.

R641-113-200. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues; to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the hearing examiner's authority is limited, the hearing examiner will be vested with general authority to conduct hearings in an orderly and judicial matter, including authority to:

210. Summon and subpoena witnesses;

220. Administer oaths, call and question witnesses;

230. Require the production of records, books and documents;

240. Take such other action in connection with the hearing as may be prescribed by the Board in referring the case for hearing;

250. Make evidentiary rulings and propose findings of fact and conclusions of law; and

R641-113-300. Conduct of Hearings.

Except as limited by the Board's order, hearings will be conducted under the same rules and in the same manner as hearings before the Board, as more fully described in R641-108.

R641-113-400. Rules, Findings, and Conclusions of Hearing Examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R641-109. All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the Board.

R641-113-500. Board Final Order.

No later than the 10th day of the month following filing of the proposed rulings, findings, and conclusions by the hearing examiner, any party may file with the Board such briefs or statements as they may desire regarding the proposals made by the hearing examiner, but no party will offer additional evidence without good cause shown and an accompanying request for de novo hearing before the Board. The Board will then consider the hearing examiner's proposed rulings, findings, and conclusions and such additional materials as filed by the parties and may accept, reject, or modify such proposed rulings, findings, and conclusions in whole or in part or may remand the case to the hearing examiner for further proceedings, or the Board may set aside the proposed ruling, findings, and conclusions of the hearing examiner and grant a de novo hearing before the Board. If a Board member acted as the hearing examiner, then said Board member will not participate in the Board's determination.

KEY: administrative procedure

1988 **40-6-1 et seq.**
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-114. Exhaustion of Administrative Remedies.
R641-114-100. Requirement.

Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

200. Informal Adjudicative Proceedings before the Division. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under these rules. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be contested and processed "formally" are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

300. Formal Adjudicative Proceedings. In any formal adjudicative proceeding before the Board, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Board may be allowed to seek judicial review of the final Board action.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-115. Deadline for Judicial Review.
R641-115-100. Filing.

A party shall file a petition for judicial review of final Board action within 30 days after the date that the order constituting the final Board action is issued. The petition shall name the Board and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63, chapter 46b of the Utah code annotated (1953, as amended).

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-116. Judicial Review of Formal Adjudicative Proceedings.
R641-116-110.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63-46b-16 through 63-46b-18 of the Utah Code Annotated (1953, as amended).

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-117. Civil Enforcement.
R641-117-100. Agency Action.

In addition to other remedies provided by law and other rules of this Board, the Board or Division may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

110. The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

120. Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

130. The action may request, and the court may grant, any of the following:

131. declaratory relief;

132. temporary or permanent injunctive relief;

133. any other civil remedy provided by law; or

134. any combination of the foregoing.

200. Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

210. Until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Board, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

220. If the Board or Division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

230. If a petition for judicial review of the same order has been filed and is pending in court.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-118. Waivers.
R641-118-1. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the Division.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R641. Natural Resources; Oil, Gas and Mining Board.
R641-119. Severability.
R641-119-1. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

KEY: administrative procedures
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R653. Natural Resources, Water Resources.
R653-5. Cloud Seeding.
R653-5-1. Definitions.

Terms used in this rule are defined as follows:

(1) "Act" or "Cloud Seeding Act" means the 1973 CLOUD SEEDING TO INCREASE PRECIPITATION ACT, Title 73, Chapter 15.

(2) "Cloud Seeding" or "Weather Modification" means all acts undertaken to artificially distribute or create nuclei in cloud masses for the purposes of altering precipitation, cloud forms, or other meteorological parameters.

(3) "Cloud Seeding Project" means a planned project to evaluate meteorological conditions, perform cloud seeding, and evaluate results.

(4) "Board" means the Utah Board of Water Resources, which is the policy making body for the Utah Division of Water Resources.

(5) "Director" means the Director of the Utah Division of Water Resources.

(6) "Division" means the Director and staff of the Utah Division of Water Resources.

(7) "License" means a certificate issued by the Utah Division of Water Resources certifying that the holder has met the minimum requirements in cloud seeding technology set forth by the State of Utah, and is qualified to apply for a permit for a cloud seeding project.

(8) "Licensed Contractor" means a person or organization duly licensed for cloud seeding activities in the State of Utah.

(9) "Permit" means a certification of project approval to conduct a specific cloud seeding project within the State under the conditions and within the limitations required and established under the provision of these Rules.

(10) "Sponsor" means the responsible individual or organization that enters into an agreement with a licensed contractor to implement a cloud seeding project.

R653-5-2. General Provisions.

(1) Authority: The State of Utah, through the Division, is the only entity, private or public, that may authorize, sponsor, or develop cloud seeding research, evaluation, or implementation projects to alter precipitation, cloud forms, or meteorological parameters within the State of Utah.

(2) Ownership of Water: All water derived as a result of cloud seeding shall be considered as a part of Utah's basic water supply the same as all natural precipitation water supplies have been heretofore, and all statutory provisions that apply to water from natural precipitation shall also apply to water derived from cloud seeding.

(3) Notice to State Engineer: The Director shall, by written communication, notify the Director of the Utah Division of Water Rights of cloud seeding permits within 45 days of issuance.

(4) Consultation and Assistance: The Division may contract with the Utah Water Research Laboratory, or any other individual or organization, for consultation or assistance in developing cloud seeding projects or in furthering necessary research of cloud seeding or other factors that may be affected by cloud seeding activities.

(5) State and County Cooperation: The Division shall encourage, cooperate, and work with individual counties, multi-county districts for planning and development, and groups of counties in the development of cloud seeding projects and issuance of permits.

(6) Statewide or Area-wide Cloud Seeding Project: The Division reserves the right to develop statewide or area-wide cloud seeding programs where it may contract directly with licensed contractors to increase precipitation. The Division may also work with individual counties, multi-county districts for planning and development, organizations or groups of counties, or private organizations, to develop Statewide or area-wide cloud seeding projects.

(7) Liability:

(a) Trespass - The mere dissemination of materials and substances into the atmosphere or causing precipitation pursuant to an authorized cloud seeding project, shall not give rise to any presumption that use of the atmosphere or lands constitutes trespass or involves an actionable or enjoinable public or private nuisance.

(b) Immunity - Nothing in these Rules shall be construed to impose or accept any liability or responsibility on the part of the State of Utah or any of its agencies, or any State officials or State employees or cloud seeding authorities, for any weather modification activities of any person or licensed contractor as defined in these Rules as provided in Title 63, Chapter 30.

(8) Suspension and Waiver of Rules - The Division may suspend or waive any provision of this rule on a case-by-case basis and by a writen memo signed by the Director. A suspension or waiver may be granted, in whole or in part, upon a showing of good cause relating to conditions of compliance or application procedures; or when, in the discretion of the Director the particular facts or circumstances render suspension or waiver appropriate.

R653-5-3. Utah Board of Water Resources.

(1) Review of License and Permit: The Board may review applications for Licenses and Permits and submit recommendations to the Director for his consideration for action on the applications.

(2) Policy Recommendations: The Board may advise and make recommendations concerning legislation, policies, administration, research, and other matters related to cloud seeding and weather modification activities to the Director and technical staff of the Division.

R653-5-4. Weather Modification Advisory Committee.

(1) Creation of Weather Modification Advisory Committee: An advisory committee may be created by the Director. Members of this committee shall be appointed by the Director, and serve for a period of time as determined by the Director.

(2) Duties of Weather Modification Advisory Committee:

(a) Advise the Director and technical staff of the Division on applications for licenses and permits; and

(b) Advise and make recommendations concerning legislation, policies, administration, research, and other matters related to cloud seeding and weather modification activities to the Director and technical staff of the Division.

R653-5-5. License and Permit Required.

(1) License and Permit Required: It is unlawful for any person or organization, not specifically exempted by laws and this rule, to act or perform services as a weather modifier, without obtaining a license and permit as provided for in the Cloud Seeding Act and this rule.

(2) To Whom License May Be Issued: Licenses to engage in activities for weather modification and control shall be issued to applicants who meet the requirements set out in the Act and Section R653-5-6. If the applicant is an organization, these requirements shall be met by the individual or individuals who are to be in control and in charge of the applicant's weather modification operations.

(3) To Whom Permit May be Issued: A permit may be issued to a licensed contractor as prescribed in Section R653-5-7.

(4) License and Permit Not Required: Individuals and organizations engaging in the following activities are exempt from the license and permit requirements of this rule:

(a) Research performed entirely within laboratory

facilities;

(b) Cloud Seeding activities for the suppression of fog;

(c) Fire fighting activities where water or chemical preparations are applied directly to fires, without intent to modify the weather;

(d) Frost and fog protective measures provided through the application of water or heat by orchard heater, or similar devices, or by mixing of the lower layers of the atmosphere by helicopters or other type of aircraft where no chemicals are dispensed into the atmosphere, other than normal combustion by-products and engine exhaust; and

(e) Inadvertent weather modification, namely emissions from industrial stacks.

(5) Effective Period of License: Each license shall be issued for a period of one year. A licensee may renew an expired license in the manner prescribed by this rule.

(6) Effective Period of Permit: Each permit shall be issued for a period as required by a proposed cloud seeding project, but not exceeding one year.

R653-5-6. Procedures for Acquisition and Renewal of License.

(1) Application For License: In order to qualify for a cloud seeding license an applicant must:

(a) Submit a properly completed application to the Division; and

(b) Submit to the Division evidence of: i) the possession by the applicant of a baccalaureate or higher degree in meteorology or related physical science or engineering and at least five years experience in the field of meteorology, or ii) other training and experience as may be acceptable to the Division as indicative of sufficient competence in the field of meteorology to engage in cloud seeding activities.

(2) Renewal of License: A licensee may qualify for a renewal of a license by submitting an application for renewal. If an organization has hired replacement personnel, the organization shall attach to its application for renewal a statement setting forth the names and qualifications of qualified personnel.

R653-5-7. Procedures for Acquisition of Permit.

(1) Application for Permit: To qualify for a cloud seeding permit a licensee must:

(a) Submit a properly completed application to the Division;

(b) Submit proof of financial responsibility in order to give reasonable assurance of protection to the public in the event it should be established that damages were caused to third parties as a result of negligence in carrying out a cloud seeding project;

(c) Submit a copy of the contract or proposed contract between the sponsor and licensed contractor relating to the project;

(d) Submit the plan of operation for the project, including a map showing locations of all equipment to be used as well as equipment descriptions;

(e) Receive preliminary approval of the project from the Director before proceeding with notices of intent described in R653-5-7(7) and (8) of this rule.

(f) File with the Division a notice of intention for publication which sets forth the following:

(i) the name and address of the applicant;

(ii) statement that a cloud seeding license has been issued by the Division;

(iii) the nature and the objective of the intended operation, and the person or organization on whose behalf it is to be conducted;

(iv) the specific area in which, and the approximate date and time during which the operation will be conducted;

(v) the specific area which is intended to be affected by the operation;

(vi) the materials and methods to be used in conducting the operation; and

(vii) a statement that persons interested in the permit application should contact the Division.

(g) File with the Division, within 15 days from the last date of the publication of notice, proof that the applicant caused the notice of intention to be published at least once a week for three consecutive weeks in a newspaper having a general circulation within each county in which the operation is to be conducted and in which the affected area is located. Publication of notice shall not commence until the applicant has received approval of the form and substance of the notice of intention from the Director.

(2) Description of a Permit: A licensee shall comply with all the requirements set out in his permit. A permit shall include the following:

(a) The effective period of the permit, which shall not exceed one year;

(b) The location of the operation;

(c) The methods which may be employed; and

(d) Other necessary terms, requirements, and conditions.

(3) Authority to Amend a Permit: The Division may amend the terms of a permit after issuance if it determines that it is in the public interest.

R653-5-8. Revocation and Suspension of Licenses and Permits.

(1) Automatic Suspension of a Permit: Any cloud seeding permit issued under the terms of this rule shall be suspended automatically if the licensee's cloud seeding license should expire, or in the case of an organization being the licensee, if the person listed on the application for the permit as being in control of, and in charge of, operations for the licensee should become incapacitated, leave the employment of the licensee, or for any other reason be unable to continue to be in control of, and in charge of, the operation in question; and a replacement approved by the Director, has not been obtained.

(2) Reinstatement of Permit: A permit which is suspended, may be, at the discretion of the Director, reinstated following renewal of the expired license, or submission of an amended personnel statement nominating a person whose qualifications for controlling and being in charge of the operation are acceptable to the Director.

(3) Director's Authority to Suspend or Revoke Licenses and Permits: The Director may suspend or revoke any existing license or permit for the following reasons:

(a) If the licensee no longer possesses the qualifications necessary for the issuance of a license or permit;

(b) If the licensee has violated any of the provisions of the Cloud Seeding Act;

(c) If the licensee has violated any of the provisions of this rule; or

(d) If the licensee has violated any provisions of the license or permit.

R653-5-9. Record Keeping and Reports.

(1) Information to be Recorded: Any individual or organization conducting weather modification operations in Utah shall keep and maintain a record of each operation conducted. For the purposes of this Section, the daily log required by Title 15, Chapter IX, Sub-Chapter A, Part 908, Section 908.8 (a), Code of Federal Regulations, November 1, 1972, as amended, and the supplemental information required by Sections 908.8 (b), (c), and (d) will be considered adequate, provided that each applicant for a weather modification permit submit with the application a list containing the name and post office address of each individual who will participate or assist in the operation, and promptly report any changes or additions

to this list to the Division.

(2) Reports:

(a) Each individual and organization conducting weather modification operations in Utah shall submit copies of the daily log and supplemental information for each month, to the Division by the last day of each succeeding month.

(b) Information copies of all other reports required by Title 15, Chapter IX, Sub-Chapter A, Part 908, Sections 908.5, 908.6, and 908.7, Code of Federal Regulations, shall be submitted to the Division as soon as practicable, but in no case later than the deadlines set by the Federal Regulation.

(c) Copies of all reports, publications, pamphlets, and evaluations made by either the licensed contractor or sponsor regarding a cloud seeding project must be submitted to the Division at the time these are made public.

(d) In relation to any evaluations made for cloud seeding effectiveness, both the method of evaluation and the data used shall be submitted to the Division.

KEY: weather modification, water policy
January 7, 2004 73-15
Notice of Continuation November 29, 2007

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Common Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Live decoys" means tame or captive ducks, geese or other live birds.

(d) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(e) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(f) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(g) "Transport" means to ship, export, import or receive or deliver for shipment.

(h) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(i) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person 12 through 15 years of age.

R657-9-4. Permit Applications for Swan.

(1) Applications for swan permits are available through the division's Internet address. Residents and nonresidents may apply.

(2)(a) Applications must be submitted online by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3) A person may obtain only one swan permit each year

(4) A person may not apply more than once annually.

(5) Group applications are not accepted.

(6) A Utah hunting or combination license may be purchased before applying, or the hunting or combination license will be issued to the applicant upon successfully drawing a permit.

(8) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-9-5. Drawing.

(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).

(b) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) Handling fee will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-9-6. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-7. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River

Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-9-8. Purchase of License by Mail.

(1) A person may purchase a hunting or combination license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-9-9. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

R657-9-10. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-11. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-13. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-14. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-15. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-16. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-17. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

R657-9-18. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-19. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-20. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-21. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-22. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-23. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-24. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-25. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-26. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-27. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-28. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-29. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-30. Use of Dogs.

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

R657-9-31. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Brown's Park - That part adjacent to headquarters.

(b) Clear Lake - Spring Lake.

(c) Desert Lake - That part known as "Desert Lake."

(d) Farmington Bay - Headquarters area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(e) Ogden Bay - Headquarters area.

(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(g) Salt Creek - That part as posted known as "Rest Lake."

(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(j) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(k) Great Salt Lake Marina and adjacent areas as posted.

(l) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-33. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-34. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-35. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-36. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

KEY: wildlife, birds, migratory birds, waterfowl
November 21, 2007 23-14-18
Notice of Continuation August 21, 2006 23-14-19
50 CFR part 20

R657. Natural Resources, Wildlife Resources.
R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.
R657-37-1. Purpose and Authority.

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management units are established to:

(a) increase wildlife resources;

(b) provide income to landowners;

(c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;

(d) create satisfying hunting opportunities; and

(e) provide adequate protection to landowners who open their lands for hunting;

(f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by the landowner association member or the landowner association operator to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.

(d) "Landowner association " means a landowner or group of landowners of private land organized as a single entity for the purpose of applying for, becoming and operating a CWMU.

(e) "Landowner association member" means an individual landowner participating in the landowner association.

(f) "Landowner association operator" means a person designated by the landowner association to operate the CWMU.

(g) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, allowing a landowner association member or landowner association operator, to designate who may purchase a CWMU big game or turkey hunting permit from a division office.

R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (3).

(b) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, shall not be included as part of any big game or turkey CWMU.

(2)(a) No land parcel shall be included in more than one CWMU.

(b) Separate hunt boundaries by species on a CWMU are not permitted.

(3)(a) The Wildlife Board may renew a CWMU that is less than 10,000 acres with land parcels that adjoin corner-to-corner or containing noncontiguous parcels provided the CWMU legally possessed a CWMU Certificate of Registration during the previous year, allowing for acreage less than 10,000 contiguous acres, corner-to-corner land parcels, or noncontiguous land parcels.

(b) The Wildlife Board may approve a new CWMU for deer, pronghorn or turkey that is at least 5,000 contiguous acres provided:

(i) the property is capable of independently maintaining the presence of the respective species and harboring them during the period of hunting;

(ii) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(iii) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters; and

(iv) the CWMU contributes to meeting division wildlife management objectives.

(c) The Wildlife Board may renew or approve a new CWMU for deer, pronghorn, elk or moose that fails to meet the acreage or parcel configuration requirements in Subsection (1), or the exceptions in Subsection (3)(a) and(b), provided the following procedures are satisfied.

(i) the applicant submits a written request for special considerations to the CWMU Advisory Committee on or before August 1st annually;

(ii) the applicant submits to a one year waiting period while the CWMU Advisory Committee, Division and Wildlife Board consider, verify and decide the merits of the request for special considerations.

(iii) upon receipt of a request for special considerations, the CWMU Advisory Committee will immediately forward the request to DWR for review and recommendations.

(iv) the DWR will review the request for special considerations and make recommendations to the CWMU Advisory Committee within 180 days of receipt.

(v) the CWMU Advisory Committee will consider the request for special considerations and the Division's recommendations, and make recommendations to the Wildlife Board on the advisability of granting the CWMU application.

(4)(a) Cooperative Wildlife Management Units organized for hunting big game or turkey, shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association must meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the CWMU pursuant to Subsection R657-37-4(3)(a)(iv).

(5) Land parcels that adjoin corner-to-corner shall not be considered contiguous for the purpose of meeting minimum acreage requirements for new CWMU's except as specifically authorized by the Wildlife Board pursuant to Subsection (3)(c)).

(6) The intent is to establish CWMUs consisting of blocks of land that function well as hunting units. The Wildlife Board may deny a CWMU that meets technical requirements but does not constitute a good hunting unit.

R657-37-4. Cooperative Wildlife Management Unit Management Plan.

(1) The landowner association member must manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game or turkey management unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by

the Wildlife Board for a period of three years, concurrent with the CWMU Certificate of Registration.

(b) The CWMU Management Plan may be amended as requested by the Wildlife Board, the division or the CWMU landowner association member or operator.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii)(1) dates that the general public with buck or bull CWMU permits will be allowed to hunt in accordance with R657-37-7(3)(a); or

(2) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(iv) a clear explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(v) an explanation of how the public is compensated by the CWMU when public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) County Recorder Plat Maps or equivalent maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(viii) two original 1:100,000 USGS maps, which must be filed in the appropriate regional division office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU;

(ix) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU, including the provisions provided in Section R657-37-7(6); and

(x) any request for reciprocal agreements.

(b) The division shall, review all CWMU Management Plans and make recommendations to the Wildlife Board.

R657-37-5. Application for Certificate of Registration.

(1) An application for a CWMU Certificate of Registration must be completed and returned to the regional division office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU landowner association member or landowner association operator.

(c) the name of the designated landowner association operator; and

(d) the nonrefundable handling fee.

(3) The division may reject any application that is incomplete or completed incorrectly.

(4) The division shall forward the complete and correct application and required documentation to the Regional Advisory Councils and Wildlife Board for consideration.

(5) Upon receiving the application and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for three years, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(6) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(7) A CWMU Certificate of Registration is issued on a three year basis and shall expire on January 31, providing:

(a) no changes in CWMU boundaries occur; and

(b) the certificate of registration is not suspended or revoked prior to the expiration date.

(8) The CWMU application/agreement is binding upon the landowner association members, landowner association operators and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

R657-37-5a. Amendments to a Certificate of Registration.

(1) A request for an amendment to a certificate of registration must be made in writing and submitted to the appropriate regional division office where the CWMU is located for any change in:

(a) permit numbers or allocation;

(b) season dates;

(c) landownership;

(d) operator; or

(e) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(2) Requests for amendments dealing with permit numbers, permit allocation or season dates:

(a) may be initiated by the CWMU or the division;

(b) are due on August 1 of the year prior to when hunting is to occur; and

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration and upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(3) All other requests for amendments shall be reviewed by the region and Wildlife Section and upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

R657-37-6. Renewal of a Certificate of Registration.

(1)(a) A CWMU Certificate of Registration must be renewed every three years if no changes in CWMU boundaries occur, or annually if boundary changes occur and may be approved by the division, except as provided in Subsections (b) and (c).

(b) If any changes occur in the activities or information authorized in the current certificate of registration or CWMU Management Plan, the renewal must be considered for approval by the Wildlife Board.

(c)(i) A CWMU Certificate of Registration shall not be renewed if:

(A) thirty-four percent or more of the private lands included in the renewal application were not included in the previous certificate of registration; or

(B) thirty-four percent or more of the private land within the CWMU is under new ownership.

(ii) If a CWMU Certificate of Registration is not renewable under this Subsection, an application for a new CWMU Certificate of Registration must be completed as provided in Section R657-37-5.

(2) An application for renewal of a certificate of registration must be completed and returned to the regional division office where the CWMU is established no later than August 1.

(3) The renewal application must identify all changes from

the previous CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan as described in Section R657-37-4(3); and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; and

(c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association operator;

(d) the name of the designated landowner association operator; and

(e) the nonrefundable handling fee.

(5) The division may reject any application that is incomplete or completed incorrectly.

(6) The division shall consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(7) The division shall:

(a) approve the renewal Certificate of Registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) deny the renewal Certificate of Registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(iii) provide the applicant with information for seeking Wildlife Board review of the denial.

(8) Upon receiving the division's recommendation as provided in Subsection (b)(i), the Wildlife Board may consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(9) A CWMU Certificate of Registration for renewal is authorized for three years and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with other landowner association members or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-4(3)(a)(x).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU; or

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief.

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permitteesa minimum of:

(i) five days to hunt with buck, bull or turkey permits; and

(ii) two days to hunt with antlerless permits.

(b) General public CWMU permitees shall be allowed to hunt the entire CWMU except areas that are excluded from hunting to all permittees.

(i) a landowner association may identify in the management plan areas within the CWMU boundary that are open to specific species only. These areas must be open to all permit holders for that species.

(c) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must

(i) clearly post all boundaries of the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land with signs that are a minimum of 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) A CWMU is created under an agreement between private landowners and the division, and approved by the Wildlife Board. Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU. The general public may use accessible public land portions of the CWMU for all legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

R657-37-8. Cooperative Wildlife Management Unit Agents.

(1) A landowner association member may appoint CWMU agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession a form of identification prescribed by the Wildlife Board which

indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry into the private land portions of a CWMU to any person, except owners of land within the unit and their employees, who:

(a) does not have in their possession a CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a CWMU; or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game or turkey for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

(a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member must, in accordance with Subsection (4), determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(2)(c).

(4)(a) Big game permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b) During a three year management plan period, permit allocations for moose permits available in the public draw will not drop below 40% for bull moose and 60% for antlerless moose.

(b) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(c) Permits shall not be issued for spike bull elk.

(d) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN

Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Does/Antlerless
1	60%	40%

Public's Share

Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER

Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

Public's Share

Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(5)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three year average may result in discipline under section R657-37-14.

(6) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(10)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

R657-37-10. Permit Cost.

The fee for permits allocated to any CWMU is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer or turkey; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-11. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a CWMU without having in his possession:

(a) a valid CWMU permit; and

(b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required

under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

R657-37-12. Season Lengths.

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the sixty-one consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) general season bull elk, pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(d)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

(A) meet the CWMU management plan objectives;

(B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;

(C) provide positive hunter satisfaction; and

(D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;

(E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;

(F) allow all public hunters the option to hunt in November;

(e) muzzleloader bull elk seasons may be established September 1 through the end of the general muzzleloader elk season and during a bull elk season variance;

(f) antlerless elk seasons may be established August 15 through January 31;

(g) antlerless deer seasons may be established August 15 through December 31; and

(h) turkey seasons may be established the second Saturday in April through May 31.

(2) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

R657-37-13. Rights-of-Way.

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

R657-37-14. Discipline or Violation.

(1) The Wildlife Board may refuse to issue a certificate of registration to an applicant, and may refuse to renew or may revoke, restrict, place on probation, change permits or allocations or otherwise act upon a certificate of registration where the landowner association member or landowner association operator has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU application/agreement; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.

(1) A CWMU Advisory Committee shall be created consisting of seven members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two CWMU representatives;

(c) one agricultural representative;

(d) one at-large public representative;

(e) one elected official; and

(f) one Regional Advisory Committee chairperson or Regional Advisory Committee member.

(3) The committee shall be chaired by the Wildlife Section Chief, who shall be a non-voting member.

(4) The committee shall:

(a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;

(b) review the operation of the CWMU program;

(c) review failure to meet antlerless objectives;

(d) hear complaints from adjacent landowners; and

(e) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a) (b) (c) and (d).

(5) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(6) The director shall set staggered terms of appointment of members in order to assure that all committee members' terms shall expire after four years, and at least three members shall expire after the initial two years.

KEY: wildlife, cooperative wildlife management unit
November 21, 2007 23-23-3
Notice of Continuation May 14, 2003

R657. Natural Resources, Wildlife Resources.
R657-54. Taking Wild Turkey.
R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

R657-54-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(d) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(e) "Essential habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(f) "Immediate family" means the landowner's lessee, or landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(g) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(h) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(i) "Open season" means the days when upland game may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(j) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-54-3. Application Procedure for Wild Turkey.

(1)(a) Applications are available through the division's internet address. Applications must be submitted by the date prescribed in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) Residents and nonresidents may apply.

(2)(a) Group applications for wild turkey will not be accepted.

(b) Applicants may select up to three hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(c) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(d) To apply for a resident permit, a person must be a resident at the time of purchase.

(e) The posting date of the drawing shall be considered the purchase date of a permit.

(3)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(4)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct applications.

(c) A turkey permit allows a person using any legal weapon as provided in Section R657-54-7 to take one bearded turkey within the area and season specified on the permit.

(5) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

(6) Applicants will be notified by mail or e-mail of drawing results. The drawing results will be available on the division's Internet address by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(7) Any permits remaining after the drawing are available on the date published in the Turkey Proclamation on a first-come, first-served basis from division offices and participating online license agents.

(8)(a) An applicant may withdraw their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the Turkey proclamation of the Wildlife Board for taking wild turkey.

(c) Handling fees and hunting or combination license fees will not be refunded.

(9)(a) An applicant may amend their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

R657-54-4. Waiting Period for Wild Turkey.

(1) Waiting periods do not apply to wild turkey permits.

R657-54-5. Bonus Points for Wild Turkey.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application when applying for a permit in the turkey drawing; or

(b) a valid application when applying for a bonus point in the turkey drawing.

(2)(a) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(b) A person may apply for one turkey bonus point each year, except a person may not apply in the drawing for both a turkey permit and a turkey bonus point in the same year.

(c) Group applications will not be accepted when applying for bonus points.

(3) A bonus point shall not be awarded for an unsuccessful landowner application.

(4)(a) Each applicant receives a random drawing number for:

(i) the current valid turkey application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(5)(a) Fifty percent of the permits for each hunt unit will

be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(6) Bonus points are forfeited if a person obtains a wild turkey permit, except as provided in Subsection (7).

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a Conservation Permit or Sportsman Permit;

(b) a person obtains a Landowner Permit; or

(c) a person obtains a Poaching-Reported Reward Permit.

(8) Bonus points are not transferable.

(9) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

R657-54-6. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the Turkey Proclamation of the Wildlife Board for taking wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-54-3.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(b) Landowner permit applications will not be accepted through the Internet.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Proclamation of the Wildlife Board for taking wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-7. Firearms and Archery Tackle.

Wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes between BB and no. 6.

R657-54-8. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking wild turkey.

R657-54-9. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-54-10. Falconry.

Falconers may not release a raptor on wild turkey.

R657-54-11. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-12. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited

for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-13. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-14. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-15. Identification of Species and Sex.

The head and beard must remain attached to the carcass of wild turkey while being transported.

R657-54-16. Use of Dogs.

(1) Dogs may be used to locate and retrieve wild turkey during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

R657-54-17. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

(1) Salt Lake Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting wild turkey only during designated turkey hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to wild turkey hunting.

(c) Goshen Warm Springs is closed to wild turkey hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-54-18. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-19. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-54-20. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or

(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-21. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-22. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information

shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-23. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the Turkey Proclamation of the proclamation of the Wildlife Board for taking wild turkey.

R657-54-24. Youth Hunting.

(1)(a) Up to 15 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 18 years of age or younger on the posting date of the wild turkey drawing.

(2)(a) Youth hunters who wish to participate in the youth limited entry wild turkey permit drawing must submit an application in accordance with Section R657-54-3.

(b) Youth who apply for a turkey permit in accordance with Section R657-54-3, will automatically be considered in the youth permit drawing based on their birth date.

(3)(a) Bonus points shall be used when applying for youth turkey permits in accordance with Section R657-54-5.

(b) Waiting periods will be incurred in accordance with Section R657-54-4.

KEY: wildlife, wild turkey, game laws
November 21, 2007 **23-14-18**
23-14-19

R657. Natural Resources, Wildlife Resources.
R657-55. Wildlife Convention Permits.
R657-55-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife convention permits.

(2) Wildlife convention permits are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities.

(3) The selected conservation organization will conduct a random drawing at a convention held in Utah to distribute the opportunity to receive wildlife convention permits.

(4) This rule is intended as authorization to issue one series of wildlife convention permits per year beginning in 2007 through 2011 to one qualified conservation organization.

R657-55-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, corporation, foundation, or association founded for the purpose of promoting wildlife conservation.

(b) "Wildlife Convention" means a multi-day event held within the state of Utah that is sponsored by multiple wildlife conservation organizations as their national or regional convention or event that is open to the general public and designed to draw nationwide attendance of more than 10,000 individuals. The wildlife convention may include wildlife conservation fund raising activities, outdoor exhibits, retail marketing of outdoor products and services, public awareness programs, and other similar activities.

(c) "Wildlife Convention Permit" means a permit which:

(i) is authorized by the Wildlife Board to be issued to successful applicants through a drawing or random selection process conducted at a Utah wildlife convention; and

(ii) allows the permittee to hunt for the designated species on the designated unit during the respective season for each species as authorized by the Wildlife Board.

(d) "Wildlife Convention Permit series" means a single package of permits to be determined by the Wildlife Board for:

(i) deer;
(ii) elk;
(iii) pronghorn;
(iv) moose;
(v) bison;
(vi) rocky mountain goat;
(vii) desert bighorn sheep;
(viii) rocky mountain bighorn sheep;
(ix) wild turkey;
(x) cougar; or
(xi) black bear.

(e) "Secured Opportunity" means the opportunity to participate in a specified hunt that is secured by an eligible applicant through the drawing process.

(f) "Successful Applicant" means an individual selected to receive a wildlife convention permit through the drawing process.

R657-55-3. Wildlife Convention Permit Allocation.

(1) The Wildlife Board may allocate wildlife convention permits by May 1 of the year preceding the wildlife convention.

(2) Wildlife convention permits shall be issued as a single series to one conservation organization.

(3) The number of wildlife convention permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) a percentage of the permits available to nonresidents in the annual big game drawings matched by a proportionate number of resident permits.

(4) Wildlife convention permits shall not exceed 200 total permits.

(5) Wildlife convention permits designated for the convention each year shall be deducted from the number of public drawing permits.

R657-55-4. Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division July 1 through August 1, 2005.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) benefit to protected wildlife;

(c) historical contribution of the organization, including its constituent entities, to the conservation of wildlife; and

(d) previous performance of the conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each applicant to verify they possess a current Utah hunting or combination license before allowing them to apply for a convention permit.

(b) select successful applicants for the wildlife convention permits by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for the wildlife convention permits without purchasing admission to the wildlife convention;

(d) notify the division of the successful applicant of each wildlife convention permit within 10 days of the applicant's selection;

(e) maintain records demonstrating that the drawing was conducted fairly; and

(f) submit to wildlife convention permit series audits by a

division-appointed auditor upon division request.

(9) The division shall issue the appropriate wildlife convention permit to the designated successful applicant after:

(a) completion of the random selection process;

(b) verification of the recipient being found eligible for the permit; and

(c) payment of the appropriate permit fee is received by the division.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permits at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

R657-55-5. Hunter Application Procedures.

(1) Any hunter legally eligible to hunt in Utah may apply for a permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed $5 per application submitted at the convention.

(3) Applicants must validate their application in person at the wildlife convention to be eligible to participate in the random drawing process, for wildlife convention permits, and no person may submit an application in behalf of another.

(4) Applicants may apply for each individual hunt.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a permit.

R657-55-6. Drawing Procedures.

(1) A random drawing or selection process must be conducted for each wildlife convention permit.

(2) No preference or bonus points shall be awarded in the drawings.

(3) Waiting periods do not apply, except any person who obtains a wildlife convention permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) No predetermined quotas or restrictions shall be imposed in the application or selection process for wildlife convention permits between resident and nonresident applicants.

(5) Drawings will be conducted at the close of the convention.

(6) Applicants do not have to be present at the drawing to be awarded a wildlife convention permit.

(7) The conservation organization shall draw twenty five eligible alternates for each wildlife convention permit and provide the division with a finalized list. This list will be maintained by the conservation organization until all permits are issued.

(8) The division shall contact successful applicants by phone or mail, and the conservation organization may post results on a designated website.

R657-55-7. Issuance of Permits.

(1) The division shall provide a wildlife convention permit to the successful applicant as designated by the conservation organization.

(2) The division must provide a wildlife convention permit to each successful applicant, except as otherwise provided in this rule.

(3) The division shall provide each successful applicant a letter indicating the permit secured in the drawing, the appropriate fee owed the division, the date this fee is due, and a postage paid envelope to return payment to the division.

(4) Successful applicants must provide the permit fee payment in full to the division and will be issued the designated wildlife convention permit upon receipt of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license.

(5) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(6) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(7) Any successful applicant who fails to satisfy the following requirements will be ineligible to receive the wildlife convention permit and the next drawing alternate for that permit will be selected.

(a) The applicant fails to return the appropriate permit fee in full by the date provided in Subsection (3) or

(b) The applicant did not possess a valid Utah hunting or combination license at the time the convention permit application was submitted and the permit received.

R657-55-8. Surrender or Transfer of Wildlife Convention Permits.

(1)(a) If a person selected to receive a wildlife convention permit is also successful in obtaining a Utah limited entry permit for the same species in the same year or obtaining a general permit for a male animal of the same species in the same year, that person cannot possess both permits and must select the permit of choice.

(b) In the event the secured opportunity is willingly surrendered before the permit is issued, the next eligible applicant on the alternate drawing list will be selected to receive the secured opportunity.

(c) In the event the wildlife convention permit is surrendered, the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit, and the permit fee will not be refunded, except as provided in Sections 23-19-38 and 23-19-38.2.

(2) If a person is successful in obtaining more than one wildlife convention permit for the same species, the applicant must select the permit of choice and the remaining permit will go to the next eligible applicant on the alternate drawing list.

(3) A person selected by a conservation organization to receive a wildlife convention permit, may not sell or transfer the permit, or any rights thereunder to another person in accordance with Section 23-19-1.

(4) If a person is successful in obtaining a wildlife convention permit but is legally ineligible to hunt in Utah the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit.

R657-55-9. Using a Wildlife Convention Permit.

(1) A wildlife convention permit allows the recipient to:

(a) take only the species for which the permit is issued;

(b) take only the species and sex printed on the permit; and

(c) take the species only in the area and during the season specified on the permit.

(2) The recipient of a wildlife convention permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking

and pursuing wildlife.

KEY: wildlife, wildlife permits
November 21, 2007 **23-14-18**
23-14-19

R714. Public Safety, Highway Patrol.
R714-158. Vehicle Safety Inspection Program Requirements.
R714-158-1. Authority.

This rule is authorized by Subsection 53-8-204(5).

R714-158-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the safety inspection program in accordance with Title 53, Chapter 8, Part 2.

R714-158-3. Definitions.

As used in this rule:

(1) "Action" means suspension or revocation of a certification or license.

(2) "Certificate" means the certificate of inspection given when a vehicle meets the requirements of the inspection program.

(3) "Certification" means the authority given to an inspector by the department to conduct safety inspections.

(4) "Commercial motor vehicle" means any vehicle, machine, tractor, trailer or semi-trailer, propelled or drawn by mechanized power upon the highway in transportation of passengers or property, or any combination thereof. It does not include implements of husbandry.

(5) "Department" means the Utah Department of Public Safety.

(6) "Fleet station" means a station licensed by the department and capable of conducting safety inspections of commercial motor vehicles, provided the fleet owns a minimum of twenty-five vehicles.

(7) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(8) "License" means the authority given to a station by the department to conduct safety inspections.

(9) "Notice of agency action" means a written notice that the department intends to suspend or revoke a certification or license.

(10) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.

(11) "Sticker" means the sticker intended to be placed on the windshield of a vehicle which has met the requirements of the inspection program.

R714-158-4. Station License.

A. Application for a license as a station can be made on forms provided by the department's Safety Inspection Section, 4501 South 2700 West, Box 14100, West Valley City, Utah 84114-1100.

(1) A $1,000 surety bond is required for all stations except fleet stations and publicly owned stations.

(2) A $100 station application fee is required.

(3) A $25 annual license fee is required for all stations except publicly owned stations.

(4) A $25 fee is required to renew a license that has been revoked.

B. Upon receiving an application for a license, the department will assign an investigator to inspect the place of business to determine if the applicant meets the requirements of this rule.

C. An applicant for a license shall meet the building and equipment requirements set forth in the "Vehicle Inspection Manual" prior to approval.

D. Upon approval, the license will be issued to the applicant and shall be displayed in a prominent location at the address shown on the license.

E. Licenses are not transferable. A change in the ownership, name, or location of a station requires a new application, bond, and license.

F. The $1,000 surety bond will be forfeited in the event a station fails to observe the provisions of Section R714-158-5 of this rule.

R714-158-5. Inspector Certification.

A. An applicant for certification as an inspector shall:

(1) obtain training in accordance with the requirements of Section R714-158-6 of this rule;

(2) pay a $10 non-refundable processing fee;

(3) be at least eighteen years of age; and

(4) have a valid drivers license.

B. Certification is valid for five years and expires on the month, day, and year shown on the certificate.

C. Certification can be renewed up to six months before the expiration date.

(1) A $10 fee is required to process a return to the safety inspection program in the event of a suspension or revocation of certification.

R714-158-6. Inspector Training and Testing.

A. Inspector applicants shall obtain training, reference materials, and instructions from the department prior to certification.

B. The department may contract with educational institutions to provide training, re-training, or testing.

R714-158-7. General Safety Inspection Program Requirements.

A. Inspections shall be conducted honestly and thoroughly. Any attempt to coerce customers, or to sell unneeded parts or repairs is prohibited.

(1) Repairs or adjustments may not be made to a vehicle without prior approval of the customer.

(a) Any part that is replaced as a result of an inspection must be returned to the customer.

(b) If a part cannot be returned, it must be shown to the customer.

(c) The customer is under no obligation to have a vehicle repaired at the station. Repairs may be made at any business selected by the customer.

(2) A current set of inspection records shall be retained at each station or record keeping office.

(a) The records shall be retained for a minimum of twelve months.

(b) When requested, records shall be made available for inspection by the department.

(3) Reports required by the department shall be submitted to the department prior to every third order of inspection supplies.

(a) Reports submitted to the department shall be legible and in sequence.

(b) Certificates and stickers shall be filled out on both sides.

(4) Each station in the safety inspection program shall maintain an adequate supply of certificates, stickers, and other inspection supplies.

(a) Certificates, stickers, and other inspection supplies shall be safeguarded against loss or theft.

(b) Missing or stolen certificates or stickers shall be immediately reported to the department.

(5) No certificate or sticker shall be issued without making a proper inspection, or issued to any vehicle that does not meet safety inspection requirements.

(6) An inspector may conduct inspections, issue certificates, and attach stickers to vehicles only at the location designated on the license.

(7) Certificates, stickers, or other inspection supplies, may not be sold or transferred from one station to another.

(8) Each station must be open for a least eight consecutive hours during the normal business day. Stations may close on holidays, Saturdays and Sundays.

(a) At least one inspector must be on duty at each station during business hours.

R714-158-8. Vehicle Safety Inspection Manual.

The department shall prepare the "Vehicle Inspection Manual" which shall be based on the "Utah Code," the "Federal Code of Regulations," the "Vehicle Inspection Handbook" of the American Association of Motor Vehicle Administrators, and on vehicle manufacturer specifications.

(1) The department shall seek the advice of the Safety Inspection Advisory Council prior to any substantive changes in the "Vehicle Inspection Manual."

(2) Inspectors shall conduct inspections in accordance with the "Vehicle Inspection Manual."

R714-158-9. Certificates, Stickers, and Inspection Reports.

A. Certificates (HP SI-29) will be issued in books of seventy-five.

(1) A maximum of seven books of certificates and twenty books of stickers may be purchased on one order.

(2) All orders shall be paid by check, except as authorized by the department.

(3) Unused certificates or stickers, if less than two years old and in quantities of ten or more, may be returned to the department for reimbursement or exchange.

(4) Returned certificates and stickers must be in the original book and sequence.

B. Certificates, stickers, and inspection reports, shall be completed and issued as set forth in the "Vehicle Inspection Manual."

R714-158-10. Incorporation of Federal Standards for Commercial Vehicles.

The department adopts federal regulation 49 CFR 393, 396, and 396 Appendix G (1997 edition), applicable to commercial motor vehicles and trailers operating in interstate commerce, and incorporates those regulations in this rule by reference.

R714-158-11. Grounds for Denial, Suspension, or Revocation of License or Certification.

A license or certification may be denied, suspended, or revoked for either of the following reasons:

(1) violation of state laws or rules applicable to vehicle inspections.

(2) conviction of any crime involving moral turpitude.

R714-158-12. Adjudicative Proceedings.

A. All adjudicative proceedings set forth in this section shall be conducted informally, and as authorized by Sections 53-8-204, 63-46b-4, and 63-46b-5.

B. Action to deny, suspend or revoke any license or certification or to appeal any denial, suspension, or revocation shall be made on forms provided by the department in accordance with Section 63-46b-3.

C. Appeal to department. A person who has been issued a notice of agency action to suspend or revoke a license or certification may request a hearing before the department by filing an appeal with the department within ten days of receipt of the notice of agency action. If a timely appeal is filed, the intended agency action shall automatically be stayed.

(1) The hearing before the department shall be informal and is intended to provide the person with an opportunity to show cause why the intended agency action should not be taken.

(2) The department will issue a signed order to the parties within five days of the hearing, ordering or denying the intended agency action.

D. Appeal to Advisory Council. A person who has been denied a license or certification, or a person whose license or certification has been suspended or revoked by the department, may request a hearing before the Advisory Council pursuant to Section 53-8-203, by filing an appeal with the department within ten days of receipt of the denial, suspension, or revocation.

(1) Except in the case of an emergency order, a timely appeal to the department requesting an Advisory Council hearing shall automatically stay a department order of suspension or revocation.

(2) The hearing before the Advisory Council shall be informal and shall be held within thirty days after the appeal is filed.

(3) The Advisory Council shall make written findings and conclusions and issue a signed order within ten days of the hearing; affirming, denying, or modifying the order of the department.

E. Reconsideration of the order of the Advisory Council may be requested in writing within twenty days of the date of the order in accordance with Section 63-46b-13.

F. The order of the Advisory Council shall be subject to judicial review in accordance with Section 63-46b-15.

G. A default order may be entered against a party who fails to participate in any of the hearings provided for in this section in accordance with Section 63-46b-11.

KEY: motor vehicle safety, inspection

July 30, 1998	**53-8-201**
Notice of Continuation November 6, 2007	**53-8-203**
	63-46b

R714. Public Safety, Highway Patrol.
R714-159. Vehicle Safety Inspection Apprenticeship Program Guidelines.
R714-159-1. Purpose.

The purpose of this rule is to establish program guidelines for a school district that elects to implement a vehicle safety inspection apprenticeship program for high school students in accordance with Title 53, Chapter 8, Part 2.

R714-159-2. Authority.

This rule is authorized by Subsection 53-8-204(5)(e).

R714-159-3. Definitions.

As used in this rule:

(1) "Apprentice" means a person meeting the qualifications described in Section II, of the Standards of Apprenticeship for Automotive Technician with the U.S. Department of Labor, who has entered into a written apprenticeship agreement providing for learning and acquiring the skills of a recognized occupation under the provisions of these standards.

(2) "Apprenticeship agreement" means the Standards of Apprenticeship for Automotive Technician as developed by the Bureau of Apprenticeship and Training, U.S. Department of Labor signed by both the apprentice and sponsor.

(3) "Certified apprentice" means a person authorized by the department to conduct safety inspections.

(4) "Closely supervise" means a sponsor will be physically present at all times on premises where safety inspections are conducted and responsible for apprentice's actions.

(5) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(6) "License" means the authority given to a station by the department to conduct safety inspection.

(7) "Registration agency" means the Bureau of Apprenticeship and Training, U.S. Department of Labor.

(8) "Sponsor" means a licensed inspector who supervises and oversees a certified apprentice and has signed the apprenticeship agreement.

(9) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.

R714-159-4. Apprentice Requirements.

An applicant for certified apprentice shall:

(1) be registered as an Automotive Technician Apprentice with the Bureau of Apprenticeship and Training, U.S. Department of Labor;

(2) be a senior in high school;

(3) be at least 16 years of age;

(4) obtain training in accordance with the requirements of Section 6 of this rule;

(5) pay a $10 non-refundable processing fee;

(6) have a valid drivers license; and

(7) only work in one sponsored station during their apprenticeship.

R714-159-5. Sponsor Requirements.

A sponsor shall:

(1) maintain records as required by the registration agency for five years;

(2) closely supervise certified apprentices;

(3) upon request, make available for inspection by the department all apprentice records.

R714-159-6. Apprentice training.

An apprentice shall obtain training through a department contracted Applied Technology Center, or through a high school that has elected to contract with the department for apprenticeship training and testing.

R714-159-7. Probationary Period.

(1) A certified apprentice will operate in a probationary period until they turn 18 years old. During this probationary period, the department, the sponsor, or apprentice may terminate the apprenticeship agreement without cause.

(2) Upon turning 18 years old, a certified apprentice may apply for an inspector certification under R714-158-5.

KEY: motor vehicles, safety inspections, apprentices
June 26, 2003 53-8-204(5)(e)
Notice of Continuation November 27, 2007

R714. Public Safety, Highway Patrol.
R714-200. Standards for Vehicle Lights and Illuminating Devices.
R714-200-1. Purpose.

Section 41-6-142 requires the Department to adopt standards for vehicle lights and illuminating devices to ensure that they meet certain specifications and that they are installed and function consistently with the requirements of other states and with regulations of the United States Department of Transportation. The purpose of this rule is to adopt such standards.

R714-200-2. Authority.

This rule is authorized by Sections 41-6-117 and 41-6-142, and Subsection 53-1-106(1)(a).

R714-200-3. Federal Standard Adopted and Incorporated by Reference.

The Department hereby adopts the standards set forth in 49 CFR 571 Standard 108 (1997 edition) as the standard governing vehicle lights and illuminating devices in Utah and incorporates such federal regulation into this rule by this reference.

R714-200-4. Miscellaneous Light Restrictions.

A. Alternately flashing lights described in Sections 41-6-132 and 41-6-140.10 may not be used on any vehicle other than a school bus or authorized emergency vehicle.

B. No vehicle, except an authorized emergency vehicle, may use rotating lights as described in Subsection 41-6-132(c).

C. No vehicle, except a police vehicle, may use rotating blue lights or flashing blue lights as described in Section 41-6-132.

KEY: lights, motor vehicle safety

May 5, 1998	**41-6-117**
Notice of Continuation November 6, 2007	**41-6-142**
	53-1-106(1)(a)

R714. Public Safety, Highway Patrol.
R714-220. Standards for Protective Headgear.
R714-220-1. Purpose.

Section 41-6a-1505 prohibits a person under age 18 from operating or riding on a motorcycle or motor-driven cycle, i.e., electric assisted bicycle, motor assisted scooter, and personal motorized mobility device, on a highway unless the person is wearing protective headgear that complies with standards established in a rule made by the commissioner of public safety. The purpose of this rule is to establish those standards.

R714-220-2. Authority.

This rule is authorized by Subsection 53-1-106(1)(a).

R714-220-3. Motorcycle Standards.

The commissioner of public safety hereby adopts the protective headgear standards in 49 CFR 571.218 (2006 edition) as the motorcycle protective headgear standards in this state and such federal regulation is incorporated into this rule by this reference.

R714-220-4. Electric Assisted Bicycle, Motor Assisted Scooter, and Personal Motorized Mobility Device Standards.

The commissioner of public safety hereby adopts the protective headgear standards in 16 CFR 1203 (2007 edition) as the electric assisted bicycle, motor assisted scooter, and personal motorized mobility device standards in this state and such federal regulation is incorporated into this rule by this reference. The standards in 16 CFR 1203 (2007 edition) meet the standards of the Snell Memorial Foundation's Standards for Protective Headgear for use in bicycling as required by Section 41-6a-1505(3)(b).

KEY: headgear, motorcycles, bicycles
June 26, 2003 41-6a-1505
Notice of Continuation November 6, 2007 53-1-106(1)(a)

R714. Public Safety, Highway Patrol.
R714-230. Standards and Specifications for Vehicle Seat Belts and Safety Harnesses.
R714-230-1. Purpose.

The purpose of this rule is to adopt standards and specifications for vehicle seat belts and safety harnesses.

R714-230-2. Authority.

This rule is authorized by Sections 41-6a-1628 and 53-1-106(1)(a).

R714-230-3. Federal Standards and Specifications Adopted and Incorporated by Reference.

The Department of Public Safety hereby adopts the vehicle seat belt and safety harness standards and specifications set forth in 49 CFR 571.209 (2006 edition) as the vehicle seat belt and safety harness standards and specifications for Utah and incorporates such federal regulation into this rule by this reference.

KEY: seat belts, motor vehicle safety
May 5, 1998 41-6a-1628
Notice of Continuation November 6, 2007 53-1-106(1)(a)

R714. Public Safety, Highway Patrol.
R714-240. Standards and Specifications for Child Restraint Devices and Safety Belts.
R714-240-1. Purpose.

Subsection 41-6-148.20(2) states that a driver transporting a child in a motor vehicle shall provide for the protection of that child by using a child restraint device or safety belt approved by the commissioner of public safety. The purpose of this rule is to adopt the standards and specifications that a child restraint device and safety belt must meet in order to be approved by the commissioner of public safety.

R714-240-2. Authority.

This rule is authorized by Subsection 41-6-148.20(2).

R714-240-3. Federal Standards and Specifications Adopted and Incorporated by Reference.

The type of child restraint device and safety belt approved by the commissioner of public safety for use in Utah is a child restraint device and safety belt which meet the standards and specifications set forth in 49 CFR 571.213 (1996 edition). The standards and specifications in such federal regulation are adopted for use in Utah and such federal regulation is incorporated into this rule by this reference.

KEY: seat belts, motor vehicle safety
May 5, 1998 41-6-148.20(2)
Notice of Continuation November 27, 2007

R714. Public Safety, Highway Patrol.
R714-300. Standards for Motor Vehicle Braking Systems.
R714-300-1. Purpose.

The purpose of this rule is to adopt standards for motor vehicle braking systems.

R714-300-2. Authority.

This rule is authorized by Section 41-6-145.

R714-300-3. Federal Standard Adopted and Incorporated by Reference.

The Department of Public Safety hereby adopts the motor vehicle braking standards set forth in 49 CFR 393.40 through 393.50, 571.105, and 571.122 (1996 edition) as the motor vehicle braking standards for Utah and incorporates such federal regulations into this rule by this reference.

KEY: brakes, motor vehicle safety
May 5, 1998 41-6-145
Notice of Continuation November 27, 2007

R714. Public Safety, Highway Patrol.
R714-550. Rule for Spending Fees Provided under Section 53-1-117.
R714-550-1. Purpose.

Pursuant to Section 53-1-117, this rule establishes criteria and procedures for the Utah Department of Public Safety to administer revenues from the "Public Safety Restricted Account" established by Section 53-3-106(1); which accrue from fee income pursuant to Sections 41-6-44.30, 53-3-105(29) and 53-3-106(5). Accordingly, these funds shall be used to:

(a) purchase equipment for law enforcement agencies of the state and its political subdivisions to assist them in enforcing alcohol or drug related driving laws;

(b) train peace officers;

(c) provide peace officer overtime; and

(d) fund the managing of DUI related motor vehicles.

R714-550-2. Authority.

This rule is authorized by Section 53-1-117 which requires the department to make rules establishing criteria and procedures for alcohol or drug enforcement funding.

R714-550-3. Law Enforcement Alcohol and Drug Fee Committee.

This rule establishes the Law Enforcement Alcohol and Drug Fee Committee (committee) which shall be responsible for assisting the department in awarding funds to purchase equipment, train peace officers, fund peace officer overtime, and develop DUI related vehicle management functions to assist in the enforcement of alcohol or drug related driving laws.

R714-550-4. Committee Membership.

(1) The committee shall consist of six members made up of one representative from each of the following groups or organizations:

(a) Utah Highway Patrol Superintendent or designee;

(b) Utah Department of Public Safety, Breath Alcohol Program;

(c) Utah Division of Highway Safety;

(d) Utah Sheriffs Association;

(e) Utah Chiefs of Police Association;

(f) Statewide Association of Prosecutors;

(2) Members of the committee shall:

(a) be approved by the Commissioner of the Utah Department of Public Safety;

(b) be appointed for four year terms; and

(c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.

(3) If a vacancy occurs during the four year term of a committee member, a new member shall be appointed from the same group or organization to complete the term of that member.

(4) The committee shall select a chairman and vice-chairman from among its members.

(5) Four members shall constitute a quorum for committee action.

(6) The department's special counsel shall assist the committee as needed.

R714-550-5. Committee Meetings.

The committee shall meet at least quarterly for the purpose of reviewing and approving applications from law enforcement agencies.

R714-550-6. Applications.

Applications for the funding of equipment, training, peace officer overtime, and DUI related vehicle management functions shall be made on department forms and shall be mailed to the committee in care of the department.

R714-550-7. Criteria and Awards.

The committee shall use the following criteria in approving funding awards:

(a) the effectiveness to which the equipment, training, overtime or DUI related vehicle management funds will be used by the agency seeking to improve enforcment of alcohol or drug related driving laws;

(b) the effectiveness of the equipment, training, overtime or DUI related vehicle management funds in enhancing the agency's ability to prosecute impaired drivers;

(c) indicators of more efficient use of manpower; and

(d) the completeness of the agency's application.

R714-550-8. Agency Accountability.

Law enforcement agencies that receive funding shall:

(a) use the awarded resources only in the manner set forth in the agency's application;

(b) use the awarded resources only to enforce alcohol and drug related driving laws;

(c) maintain records for five years sufficient to show how the funding is used; and

(d) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding.

KEY: drugs, alcohol, fees
August 24, 2000 53-1-117
Notice of Continuation November 7, 2007

R728. Public Safety, Peace Officer Standards and Training.
R728-404. Basic Training Basic Academy Rules.
R728-404-1. Admission Requirements.

A. United States Citizenship.

B. Minimum age of 21 years at the time of appointment as a peace officer.

C. Fingerprinting and search of local, state and national fingerprint files to determine whether applicant has a criminal record, final certification to be withheld until this search is completed.

D. May not have been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary, or for which the applicant could have been imprisoned in the penitentiary of this or another state. Conviction of any offense not serious enough to be covered under Subsection (1)(d) of 53-6-203 Utah Criminal Code, involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of admission to a training program or refusal to take a certification examination. Notwithstanding the provisions of Title 77, Chapter 18, expungement of felony convictions obtained in this state and any other jurisdiction shall be considered for purposes of this subsection.

E. Shall be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement.

F. Shall demonstrate good moral character as determined by a background investigation, which may include consideration of offenses expunged under Title 77, Chapter 18.

G. Free of any physical, emotional or mental conditions that might affect adversely the performance of duty as a peace officer as determined through a selection process by the employing agency.

R728-404-2. Graduation Requirements.

A. Written Examinations and Quizzes.

1. Examinations and quizzes are a necessary method of testing not only the student's substantive knowledge, but also their reading, comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. They will be given as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor will result in dismissal from the Academy. Students must score an average of 80% on all exams except the first aid, arrest control, and certification exams where a minimum of 80% must be scored.

2. The cadet is required to maintain an 80% weighted average or higher from each weekly quiz. If a cadet falls below the 80% weighted average after three weeks in the academy, they will be counseled by the training staff and may be offered remediation.

3. The cadet is required to pass each exam with 80%. If a cadet fails the exam they will be offered remediation from the training staff and allowed one retake. For purposes of academic excellence awards, the first exam will be used in the calculation.

4. A final Certification Examination will be required of each student in order to achieve peace officer/special function officer certification or become certifiable. A minimum score of 80% must be scored. If the score is less than 80%, the student will be allowed to take one make-up exam to achieve the required 80%. Make-up exams must be taken prior to one year from the date of the initial exam. If the student fails to achieve 80% on the make-up certification examination, he will be required to go through the training again to achieve certification or become certifiable (be eligible to be certified when hired in a position requiring certification.) It will be the policy of the Academy to cover the expenses of a returning sponsored student; however, if a sponsored student is twice suspended from the Academy and that student continues in his attempt to complete the Academy, it will become the responsibility of the sponsoring agency and/or the student to pay the tuition assessed by the Academy. Returning self-sponsored students will be responsible for their expenses and tuition.

B. Participation.

Students will actively participate in physical fitness training, practical problems, classroom work, tours, graduation exercises, and any other activities unless specifically excused by the training supervisor.

C. Reports.

Students may be required to complete written reports. All reports will be graded on a pass/fail basis.

D. Firearms Qualification.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in firearms training and demonstrate the ability to safely handle a firearm, and

b. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will receive one opportunity to retake the course(s) and qualify. Retests will be scheduled by the POST Firearms Instructor and applicable training supervisor.

Note: The POST Staff Firearms Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include:

a. weather,
b. quality/quantity of instructors,
c. equipment problems,
d. medical problems,
e. etc.

If the POST Staff Firearms Instructor decides there were one or more circumstances beyond the control of the student or the instructor and the student fails to qualify, the POST Staff Firearms Instructor may schedule a retest.

E. Vehicle Operation.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in all scheduled classroom and practical vehicle operation training (any training missed must be made up before a student can graduate and be certified or become certifiable),

b. demonstrate the ability to safely handle a vehicle in an emergency situation, and

c. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will:

a. have four more opportunities to qualify on the day of the test;

b. after remedial training the student will have three more opportunities to qualify at a later date which will be scheduled by the driving instructor and the training supervisor.

Note: The POST Staff Vehicle Operation Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include but are not limited to:

a. weather,
b. quality/quantity of instructors,
c. equipment problems,
d. medical problems,

e. etc.

If the POST Staff Vehicle Operation Instructor decides there were one or more circumstances beyond the control of the student and the student fails to qualify, the POST Staff Vehicle Operation Instructor may schedule a retest.

F. Physical Training.

Participation in physical training is required during the basic academy program. Students will be required to take the physical assessment test at the end of the peace officer program and score at the 50th percentile in each exercise to graduate. If a student fails to pass the physical assessment test, one retest will be administered before the graduation ceremony. Should students fail to meet the physical fitness testing requirements, they will not be permitted to have their picture taken with the class or graduate with the class.

G. Arrest Control/Baton.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in scheduled arrest control/baton training,

b. demonstrate the ability to apply arrest control and baton techniques, and

c. pass a POST approved practical examination.

2. Retesting.

H. Failure to Qualify in a Skill Area.

1. Students who fail to qualify in any skill area during a basic training program, will have four years to meet the approved standard before they will be required to go back through an academy program.

2. Retesting during the four year period will be at the convenience of POST and a testing fee will be imposed each time a test is administered.

3. POST may refuse to administer a test at any time if POST feels it's in the best interest of the individual and/or POST.

I. Counsel.

Individual counseling is available to any student on request to his class training supervisor.

J. Make-Up Policy.

1. All requirements must be satisfied before a student can graduate and become certifiable or certified.

2. Basic training supervisors will notify the student and his department head of any deficiencies in meeting graduation requirements.

3. The student and department head will be advised of the policy and procedures involved in the make-up of any deficiencies for graduation and certification.

4. Should a student become ill or injured to such an extent that it is impossible or unwise to participate in any part of the academy training, a doctor must be seen by the student. A written explanation must be obtained from the doctor and presented to the student's training supervisor.

K. Attendance.

1. Students will be required to attend all training unless an emergency exists or a valid excuse is given.

2. More than three unexcused absences may result in suspension from the Academy. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences will be cleared through the student's Academy supervisor before the absence occurs. It is the student's responsibility to contact the Academy supervisor when he is absent or late. Attendance information may be made available to department heads periodically.

3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.

4. In no case will a student be certified or become certifiable who has missed more than 10% of the basic course until the necessary make-up work has been completed.

5. If a student has missed a significant part of any block of instruction, as determined by the POST staff, he will not be certified or become certifiable until the necessary make-up work is completed.

6. Under no circumstances will a student graduate if he misses any of the following classes until they are made-up:

a. Ethics and Professionalism,
b. Laws of Arrest,
c. Laws of Search and Seizure,
d. Use of Force,
e. First Aid (CPR only),
f. Emergency Vehicle Operation,
g. Vehicle Operation Liability,
h. Vehicle Operation Practical,
i. Arrest Control Practical Examination,
j. Firearms Safety,
k. Firearms Range/Day Shooting (qualification only),
l. Firearms Range/Night Shooting,
m. Reasonable Force,
n. Firearms Decision Making, or
o. Crimes-In-Progress (practical only).

L. Grounds for Dismissal From Basic Training:

1. failure to meet the minimum academic standard,
2. failure to meet the physical fitness standard,
3. failure to achieve 80% on the State Certification exam,
4. evidence of any health problem that would keep the student from successfully completing the basic training program,
5. failure to comply with Academy rules,
6. failure to meet the standards as stated in Section 53-6-203, or
7. failure to satisfactorily perform in any of the skill areas required during basic training.

R728-404-3. Health Services and Emergencies.

A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.

B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments will be expected to pay for the above services and supplies.

C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls will not be accepted.

R728-404-4. Classrooms.

A. Students will be responsible for keeping the classrooms neat and clean. No food, drinks or smoking will be allowed in the classroom.

B. From time to time, POST will take portions of the training to locations other than the Academy. While at any of these locations, students will respect the property of others and conduct themselves accordingly. If any damage occurs, it will be reported to the training supervisor as soon as possible.

R728-404-5. Special Regulations.

A. Alcohol and Gambling.

No student will consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night classes, the last class of the day means the last night class.

1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.

2. Gambling will not be permitted at any time or place on the Academy site.

3. Persons found to be in violation of Section D will be

suspended or dismissed from the Academy.

B. Dress Code.

Students are required to wear their individual department uniform beginning the first day of class. Because almost all training requires the wearing of the department uniform it is recommended that students have at least two clean uniforms available at all times.

The following dress code will be mandatory for self-sponsored students.

1. Male. Light blue long or short sleeve shirt, navy blue slacks, navy blue tie, and conservative dress shoes.

2. Female. Light blue long or short sleeve blouse, navy blue tie, navy blue dress slacks or skirt, and conservative dress shoes.

The official Academy patch will be worn on both sleeves of the self-sponsored uniform.

3. Only authorized Academy gym clothing will be worn during physical fitness training and arrest control techniques. No radio/tape head sets will be allowed during physical training classes. Hard soled shoes will not be worn on the gym floor.

4. Practical Problems.

The training supervisor may allow students to wear appropriate civilian clothing for designated training.

a. Appropriate civilian clothing includes: blue jeans, slacks, t-shirts, sweaters, hats, coats, jackets and athletic shoes.

b. Inappropriate civilian clothing includes: cutoffs, shorts, halter tops, tank tops or any other item the training supervisor deems inappropriate.

The uniform requirement is intended to help encourage basic students to look and act in a more professional manner. Any staff member at any time can instruct a student to change a uniform or any apparel when in the opinion of the staff member it does not meet the intent of the dress code.

C. Grooming.

All students will be expected to maintain proper grooming habits at all times. Clothing will be clean and well cared for. Shoes will be shined. Male students will be clean shaven every day. Beards will not be allowed. Hair must be clean and neat. Male students will have hair trimmed so that it does not hang over the center portion of the shirt collar when the student is standing straight.

D. Conduct.

1. All students will be expected to conduct themselves in an adult and professional manner at all times.

2. No loud, abusive, or obscene language will be permitted unless necessary in a practical exercise.

F. All students shall realize that while at the Academy they will be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status will be made by the training supervisor and approved, where necessary, through the chain of command.

R728-404-6. Lost, Damaged or Destroyed Items.

Students who lose or damage items beyond serviceability will be required to reimburse the Academy for the replacement value.

R728-404-7. Cost of Training.

Costs of Basic Training are born by the state for sponsored students. Self-sponsored students shall be charged the currently approved rate.

R728-404-8. Disciplinary Action.

A. Students do not have a protected property interest in their enrollment at the Academy. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards will be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the POST Policy and Procedure Manual.

B. A violation of any of the Academy rules can result in anyone or more of the following actions:

1. verbal reprimand,
2. written reprimand,
3. probation,
4. referral to department for discipline,
5. suspension, or
6. dismissal.

C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

D. In all cases, the student will be given the opportunity to speak in his behalf before any action is taken.

E. Once an action is decided upon, the student and his employing agency will be immediately notified.

F. In all cases where a student is suspended or dismissed from the Academy, his employing agency will be immediately notified.

G. Students may appeal any decision by following the procedures outlined in the POST Policy and Procedure Manual.

R728-404-9. Dormitory Facilities.

All students will comply with the residency requirements for the Larry and Gail Miller Public Safety, Education and Training Center dorm facility. A copy of this policy will be provided to each student that will be using the dorm facility at the start of the academy class.

KEY: law enforcement officers, basic academy rules
December 1, 2007 53-6-105
Notice of Continuation February 26, 2007 53-6-106
53-6-107

R728. Public Safety, Peace Officer Standards and Training.
R728-501. Career Development Courses.
R728-501-1. Authority.

This rule is authorized by Section 53-6-105.

R728-501-2. Basic Training.

The first step on the career development ladder is the successful completion of a POST approved basic training course. The required course may be the Utah Peace Officer Standards and Training Basic course or an equivalent course completed in another state. If the course was completed in another state, the officer will be required to successfully complete the POST waiver process and receive Utah peace officer certification.

R728-501-3. Advanced Officer.

A. The advanced officer certificate is the second step in the POST career development program. In order to obtain an advanced officer certificate, an application must be submitted to POST showing accomplishment of the following requirements:

1. The candidate must be employed as full-time peace officer with a minimum of three continuous years of peace officer experience.

2. All candidates must have attained a minimum firearms qualification score of 80 percent on a POST accepted firearms course during the preceding year.

3. Each candidate must show evidence of having a current intoxilyzer certificate and a radar operators certificate.

4. The candidate may waive requirement three by showing evidence of completion of at least forty-hours of specialized training directly related to his present assignment.

5. The candidate must show evidence of having a current CPR card.

6. The candidate must be nominated for advance officer status by a letter from the candidates chief/sheriff.

B. Each candidate, upon approval of his application, will be invited to attend a thirty hour advance officer course. These courses will be conducted periodically at POST and at various regional locations.

C. Each candidate must pass a written examination on the subjects covered in the advanced officer course. Successful candidates will be awarded a POST advanced officer certificate and advanced officer insignia.

D. To receive advanced officer certification, the officer is required to achieve a score of 50 percent on each of the POST physical tests: Vertical jump, sit-ups, push-ups, 300 meter sprint, and 1.5 mile run.

E. The physical assessment test will be administered by POST staff during the advanced officer course.

F. Officers who achieve a score of 85 percent in each of the four fitness tests will earn the advanced officer superior fitness award.

R728-501-4. First-Line Supervisor.

A. The first-line supervisor course in intended to fill the supervisory training needs of sergeants and other law enforcement personnel. The goal of the program is to offer a course that is job related, consistent with current supervisory needs, and one that will develop self confidence, and a positive attitude toward supervision.

B. The advanced officer course is not a prerequisite for this course.

C. Officers can register for this course by submitting a POST course request signed by their chief administrative officer or training officer.

R728-501-5. Mid-Management Certificate.

A. The mid-management development program is intended to fulfill the management training needs of lieutenants, captains and department heads. A law enforcement administrator can earn the mid-management certificate by successfully completing three prescribed courses offered by POST. The three courses are:

1. First-Line Supervisor
2. Instructor Development
3. Employee Discipline and Administrative procedure course

In addition to the three courses offered by POST the candidate is required to attend two management level courses, which are approved by their chief administrating officer.

B. A mid-management certificate will be awarded when a candidate can document that he has successfully completed the five prescribed courses.

R728-501-6. Executive Development Institute.

The Executive Development Institute is intended for department heads and their executive staff positions. EDI is co-sponsored by the Utah Chiefs of Police Association, the Utah Sheriff's Association, and POST. The EDI training format is a two-day seminar addressing issues germane to Utah law enforcement management. The Executive Development Institute is conducted two times each year.

KEY: law enforcement officers, career development courses, in-service training
December 1, 2007 53-6-105
Notice of Continuation October 10, 2003

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-16, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2007 edition of the National Electrical Safety Code, C2-2007, as approved by the American National Standards Institute, ISBN 07-7381-4893-8, incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefor. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-100-3(F), Consumer Complaints, Practice and Procedure Governing Formal Hearings.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2001 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2001, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical

energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2006 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2006, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- A utility shall not render a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and
8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation, electric utility industries

November 26, 2007 **54-3-1**
Notice of Continuation December 6, 2002 **54-3-7**
54-4-1
54-4-8
54-4-14
54-4-23

R850. School and Institutional Trust Lands, Administration.
R850-40. Easements.
R850-40-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the director to establish rules for the issuance of easements on, through, and over trust land, and to establish price schedules for this use.

R850-40-150. Planning.

The agency shall:

1. Submit proposed easements for review by the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and

2. Evaluate and respond to comments received through the RDCC process.

R850-40-200. Easements Issued on Trust Lands.

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands if the agency determines such action would be in the best interests of the trust beneficiaries.

R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.

1. In order to determine the existence of any temporary easements or rights-of-entry on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation shall not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477 Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a permissive statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice will provide information to any responsible authority asserting a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application") The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 90 days from the date of the notice within which to submit an application.

(b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property being considered for sale, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry upon sale of the subject property. Other responsible authorities shall have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into a permanent property easement or right-of-entry, the agency shall evaluate the request pursuant to the fiduciary responsibilities of the agency. A decision on whether or not to approve the application shall be made at least 30 days prior to a sale of the subject property. Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, the temporary easement or right-of-entry on the subject property shall be extinguished.

R850-40-300. Easement Acquisition.

1. Easements across trust lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto.

2. Easements, or other interests in trust lands, may not be acquired by:

(a) prescription,

(b) adverse possession, or

(c) any other legal doctrine except as provided by statute.

R850-40-400. Easement Charges.

The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, may be based on either the market value of the use or the market value of the land encumbered by the easement.

R850-40-500. Surveys.

1. Anyone desiring to perform a survey on trust land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement.

2. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements.

3. The notice shall also contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director.

4. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

R850-40-600. Minimum Charges for Easements.

The agency may establish a minimum charge for an easement based on the cost incurred by the agency in administering the easement.

R850-40-700. Application Procedures.

1. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge

of any obligation of the agency arising from the approval of the application.

R850-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

R850-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R850-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies due to the agency for costs of reclamation and compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Other forms of surety as may be acceptable to the agency.

R850-40-1100. Conflict of Use.

The agency reserves the right to issue non-exclusive easements or leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements.

R850-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

R850-40-1300. Renewal of Easement.

Prior to the expiration date of any easement, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R850-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R850-40-1500. Removal of Trees.

Forest products shall not be cut or removed from the easement unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

R850-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director may consider the following factors:

A) the fee established under R850-40-1600(1)(c)(i) would create an undue financial burden upon the applicant, or

B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

R850-40-1700. Termination of Easement.

1. Any easement granted by the agency may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules.

2. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R850-40-1800. Abandonment.

1. In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the

easement as provided in R850-4.

2. This administrative charge shall not be construed as rent.

3. In lieu of this charge, the agency may allow a grantee to pay a one-time negotiated charge.

KEY: natural resources, management, surveys, administrative procedures
November 21, 2007 53C-1-302
Notice of Continuation June 27, 2007 53C-2-201(1)(a)
53C-4-203

R850. School and Institutional Trust Lands, Administration.
R850-80. Sale of Trust Lands.
R850-80-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to prescribe the terms and conditions for the sale of trust land.

R850-80-150. Planning.

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals for the sale of trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2. Evaluate and respond to comments received through the RDCC process; and

3. Evaluate any comments received through the notice and advertising processes conducted pursuant to R850-80-600 and R850-80-615.

R850-80-200. Sale of Trust Lands.

The agency may sell trust land if the agency determines that the sale of the land would be in the best interest of the trust beneficiaries and provided that the land is sold for no less than fair market value.

R850-80-250. Evaluation of Temporary Easements, Rights-of-Entry and Existing Rights of Record.

Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-40-250(2) to evaluate whether any temporary easement or right-of-entry exists on the subject property. The agency shall also evaluate the presence and impact of other valid existing rights of record on the subject property prior to sale, and take any appropriate steps to mitigate adverse impacts resulting from such rights.

R850-80-300. Sales Initiation Process.

The sales process shall be initiated by an agency determination to evaluate the appropriateness of the sale of a particular parcel of trust land. The evaluation shall be undertaken in accordance with R850-80-500. In determining the appropriateness of a parcel of trust land for sale, the agency may consider nominations by interested parties.

R850-80-400. Sales Deposits.

If the agency evaluates a parcel of trust land for sale due to a nomination by an interested party, the person making such nomination may be required to deposit funds in an amount determined by the agency to be used to offset costs incurred in preparing the parcel for sale. In the event the person making the deposit is the successful purchaser of such land, the deposit shall be a credit against any fees charged by the agency to the purchaser for preparing the land for sale. In the event the person making the deposit is not the successful purchaser of such land or the land is not offered for sale, the deposit shall be refunded.

R850-80-500. Sale Determination Procedures.

1. Preliminary Analysis

(a) The director shall not offer trust land for sale when:

i) the subject property is appreciating in value at a rate in excess of the anticipated return from the investment of the principle;

ii) there is no evidence of competitive market interest, unless the purpose of the sale is to test the market in a particular area;

iii) the sale would create obstacles to future mineral development on trust lands; or

iv) in the sole discretion of the director, it has been determined that the sale would foreclose future development or management options which would likely result in greater long term economic benefit.

2. Market Analysis

(a) The agency shall conduct a market analysis of a proposed sale of trust land which shall include an estimate of value. If the estimate of value is determined by an appraisal, the cost of the appraisal shall be borne by the successful purchaser.

(b) The market analysis may also include the evaluation of:

i) real estate trends;

ii) market demand;

iii) opportunity costs including potential for appreciation; and

iv) associated management costs of retention.

3. Sale Determination

(a) The director may take into account any factor and circumstances deemed relevant, as well as any applicable policy adopted by the board, when making a determination as to whether to sell trust land. Prior to the sale of trust land, the agency shall take prudent and cost-effective actions to increase the value of the land.

(b) If a sale is determined to be appropriate, the agency shall determine the minimum acceptable selling price of the subject property, which minimum acceptable selling price shall not be less than fair market value. This determination may include information from any of the following:

i) the appraisal;

ii) the data gathered pursuant to R850-80-500(2); and

iii) any other information which the agency considers relevant.

(c) The minimum acceptable selling price shall be provided protected records status until the sale is consummated, unless otherwise ordered by the director.

R850-80-550. Methods of Sale.

The agency may sell land or assets using one of the methods described below:

1. A public sale pursuant to R850-80-610, or

2. A negotiated sale pursuant to R850-80-620.

R850-80-600. Public Sale Notice and Advertising.

1. At least 30 days prior to a public sale, notice shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) the date, time, and location where the sale will be held;

(b) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(c) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise public sales using any other methods the director has determined may increase the potential for additional competition at the sale.

R850-80-610. Public Sale Auctions.

Public sale auctions shall be conducted as follows:

1. Sealed bids shall be accepted until the day prior to the auction by the agency, or on the day of the auction by the officer conducting the auction.

2. A sealed bid shall contain funds in an amount equal to at least 10% of the total bid amount offered to purchase the

subject property and may be required to consist of certified funds. Bids and bid deposits shall be a specified dollar amount. The agency reserves the right to reject any bid however submitted.

3. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.

4. The persons submitting the three highest bids shall be allowed to enter into oral bidding, which shall begin at the amount of the highest sealed bid, subject to those terms and conditions of R850-80-610(5). Those persons who submit a sealed bid that is within 20% of the third highest sealed bid shall also be allowed to participate in oral bidding, subject to those terms and conditions of R850-80-610(5).

5. In the event the minimum selling price of a property is disclosed prior to the auction, persons who bid less than the disclosed minimum selling price shall be disqualified and shall not be eligible for oral bidding, even if such bids would otherwise meet those requirements in R850-80-610(4) or (6).

6. Only current grazing permittees, materials permittees and special use lessees on the subject property who submit sealed bids shall automatically qualify to enter into oral bidding, subject to those terms and conditions of R850-80-610(5).

7. All bids, whether sealed or oral, constitute a valid offer to purchase. An attempt to withdraw a sealed bid after the first sealed bid has been read, or an attempt to withdraw or amend an oral bid may result in the forfeiture of the bid deposit and any other remedy afforded the agency at law or equity.

8. If, after the first round of oral bidding, no bid is submitted which equals or exceeds the agency's minimum selling price, then the sale shall not be made except as provided below.

(a) At the discretion of the officer conducting the sale, qualified bidders may enter into additional rounds of oral bidding, starting at the high bid reached in the previous round.

(b) To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum selling price.

9. At the conclusion of the auction, the agency shall collect from the successful bidder:

(a) a down payment in the amount required by the sale notice;

(b) interest on the unpaid balance from the date of sale to the first day of the following month; and

(c) reimbursement of costs incurred in preparing the parcel for sale, which may include costs incurred for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

10. The first payment shall be due one year from the first day of the month following the sale; subsequent payments shall be due on the first day of the same month each year thereafter until the balance is paid in full.

11. Amounts paid in excess of the current obligations shall be applied to principal. The unpaid balance, plus interest to date, may be paid in full at any time without penalty.

12. If the successful bidder defaults on the down payment or otherwise fails to meet the requirements of R850-80-610(9), the property may, upon approval by the director, be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale shall meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder shall have 30 days from the date of the agency's offer to submit the amounts required under R850-80-610(9).

13. The interest rate which shall be charged against any unpaid balance at the conclusion of the auction shall be the prime rate, as determined by the agency on the date the public sale is approved by the director, plus 2 1/2% (Prime Rate + 2 1/2%). Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as determined by the agency on the date of billing, plus 2 1/2% (Prime Rate + 2 1/2%).

14. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel.

R850-80-615. Negotiated Sale Notice and Advertising.

1. Prior to an agency decision to initiate a negotiated sale, notice of such shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(b) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise negotiated sales using any other methods the director has determined may increase the potential for additional interest in the subject property.

R850-80-620. Negotiated Sale Procedures.

1. Negotiated sales shall be advertised in the manner set forth in R850-80-615. In the event a competing offer(s) is received, the agency shall evaluate the offers and determine what action is in the best interest of the beneficiaries.

2. The board and affected beneficiary institution(s) shall be provided notice 30 days prior to the sale describing the terms, reasons, and other pertinent facts of the proposed negotiated sale.

3. Board approval of a negotiated sale is required if:

(a) the value of the subject property exceeds $250,000.00;

(b) the subject property exceeds 320 acres in size; or

(c) additional interested person(s) indicate to the agency an interest in purchasing the subject property.

4. A purchaser of trust land sold at a negotiated sale may be required to reimburse the agency for costs incurred in preparing the parcel for sale, which may include costs for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

R850-80-700. Certificates of Sale.

1. Following a public sale or upon concurrence of the parties in a negotiated sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the subject property, and shall include:

(a) information regarding the amount paid;

(b) the amount due;

(c) the time when the principal and interest shall become due;

(d) the beneficiary of the land;

(e) provisions for remedies the agency may elect in the event of a default, as such remedies are set forth in R850-80-700(8); and

(f) any other terms, covenants, deed restrictions, or conditions which the agency considers appropriate.

2. Certificates of sale must be executed by the purchaser and returned to the agency within 30 days from the date of the

purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice shall be sent to the purchaser giving notice that after 30 days the sale may be canceled with all monies received, including the down-payment, forfeited to the agency. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to cancel a sale of trust land for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the director, and that no assignment is effective until approval is given by the director in writing.

5. An assignment of a certificate of sale shall be consistent with these rules, executed by the assignee and assignor and acknowledged, and shall clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from any obligations under the original certificate of sale.

7. Upon payment in full and surrender of the original certificate of sale for any tract of land sold, or payment in full of any amounts required under R850-80-750(3) for the partial release of property, the agency shall issue a patent to the appropriate person.

8. In the event of a purchaser's default under the certificate of sale, the agency's remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the certificate of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity.

R850-80-750. Partial Releases.

Partial release of property sold under a certificate of sale may be allowed at the discretion of the director. The following conditions shall be met:

1. Access to the remainder of the land must be preserved without restriction;

2. All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate shall have the capacity and capability to service all trust land originally included in the certificate;

3. Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the original price per acre, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of certified funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

4. Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph 3 above shall not include the 10% down payment or any annual installment paid under the certificate of sale;

5. The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released and the remaining land under the certificate; and

6. The value of the remaining land shall not be reduced to an amount less than the remaining principal balance of the certificate.

KEY: administrative procedures, sales

October 9, 2007	**53C-1-302(1)(a)(ii)**
Notice of Continuation June 27, 2007	**53C-2-201(1)(a)**
	53C-4-101(1)
	53C-4-102
	53C-4-202(6)
	63-2-304
	72-5-203(1)(a)(i)
	72-5-203(2)(a)

R850. School and Institutional Trust Lands, Administration.
R850-83. Administration of Previous Sales to Subdivisions of the State.
R850-83-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for sales of land to subdivisions of the state.

R850-83-150. Scope.

The intent of this rule is to provide a process for administering reversions of land sold under Sections 65-1-29 and 65A-7-4(5), both of which have been repealed.

R850-83-200. Definitions.

The following term, as used in this section, is defined as follows:

1. Public Purpose - Use by a subdivision of the state that benefits the general public of the subdivision or public at large and that is approved by the agency.

R850-83-300. Remedies for Breach of Determinable Fee Sale.

1. The conditions of a determinable fee sale are breached, and a determinable fee estate shall terminate, upon the violation of any of the following:

(a) A provision of Utah common law or other applicable law or rule, such as a provision of Section 65-1-29 or 65A-7-4(5) as applicable at time of sale; or

(b) A "public purpose", a "subdivision of the state", or other condition relating to the grant of a determinable fee as stated in the deed or other instrument of conveyance.

2. In the event of a breach of a determinable fee sale provision, in which case all of the subject property shall revert, the agency may elect one, or a combination of, the following remedies consistent with the trust land management objectives listed in R850-2-200:

(a) Allow the reversion of the entire property to stand without further action by the agency.

(b) Enter into an agreement providing for final resolution of the breach, which agreement may include exchange of all or part of the reverted property, payment for all or part of the reverted property, or retention of all or part of the reverted property; provided the agreement fully compensates the trust for reasonably foreseeable losses caused in whole or part by the breach.

3. Any costs involved in the transaction described above shall be borne entirely by the applicant and, if applicable, shall be based on the current agency fee schedule.

4. The provisions of this rule are not intended to compel the agency to accept a particular resolution of a breach of a determinable fee limitation and shall not preclude the agency from settlement of disputes involving a breach of determinable fee sale on terms that are otherwise in the best interest of the applicable trust beneficiaries.

KEY: subdivisions, sale procedures, administrative procedure
1993 53C-1-302(1)(a)(ii)
Notice of Continuation November 2, 2007 53C-4-101(1)

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home

office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(a) Nonbusiness income means all income other than business income and shall be narrowly construed.

(b) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In

general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

(c) Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

(i) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under Subsection (7)(a)(i).

(ii) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See Subsection (7)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

(v) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(vi) A schedule must be submitted with the return showing:

(A) the gross income from each class of income being allocated;

(B) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) the total amount of the applicable expenses for each income class; and

(D) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

(vii) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(viii) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(2) Definitions.

(a) "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Allocation" means the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

(e) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange or property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of J.

(3) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) Except as provided in Subsection (3)(a)(ii)(B), if a taxpayer does not make an election to double weight the sales factor under Subsection 59-7-311(3) and one or more of the factors listed in Subsection 59-7-311(2)(a) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer has made an election to double weight the sales factor under Section 59-7-311(3) and if the sales factor is present, the denominator of the fraction described in Subsection (3)(a)(ii)(A) shall be increased by one.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(4) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(5) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(6) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (7), the payroll factor, see Subsection (8), and the sales factor, see Subsection (9) of the trade or business of the taxpayer. For exceptions see Subsection (10).

(7) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (7)(f).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or

business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection (10)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (7)(f)(i).

(8) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The

compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(i) The term "employee" means:

(A) any officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(ii)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(e) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(f) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(iv) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(9) Sales Factor. In General.

(a) Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See

Subsection (10)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (10)(c).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (9)(e) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f) Sales Other than Sales of Tangible Personal Property in this State.

(i) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(ii) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(A) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) the sale, rental, leasing, or licensing or other use of real property;

(C) the rental, leasing, licensing or other use of intangible personal property; or

(D) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(iii) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(iv) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(A) the income producing activity is performed wholly within this state; or

(B) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(v) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed

in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

(10) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;

(ii) the exclusion of any one or more of the factors;

(iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(c) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (9)(a)(i), and income from the sale, licensing or other use of intangible personal property, see Subsection (9)(f)(ii)(D).

(A) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (10)(c)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (10)(c)(iv). This Subsection (10)(c)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (10)(c)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (10)(c)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this J.3.d), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(d) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(e) Partnership or Joint Venture Income. Income or loss

from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

a. depreciation (see rule R865-6F-9),
b. depletion,
c. exploration and development expenses,
d. intangible drilling costs,
e. accounting methods and periods (see rule R865-6F-2), and
f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

a. installment sales (see rule R865-6F-15),
b. consolidated returns (see rule R865-6F-4),
c. liquidating dividends,
d. municipal bond interest,
e. capital loss deduction,
f. loss carry-overs and carry-backs, and
g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long- term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is

computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

(6) The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

(7) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (7)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (7)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (7)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865- 6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles

traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or (d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-415.

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Qualifying investment" in the case of a business firm that is a member of a unitary group, does not include an investment made by that business firm in plant, equipment, or other depreciable property of another member of the unitary group.

6. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

7. "Unitary group" is as defined in Section 59-7-101.

B. For purposes of the investment tax credit, an investment is a qualifying investment if:

1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

G. Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

H. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

I. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8),and the sales factor in accordance with R865-6F- 8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within

and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-

6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(10)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or

other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The Tax Commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state

during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the Tax Commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(9) and (10).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts

factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the

channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

(c) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8) and the sales factor in accordance with R865-6F-8(9).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(7).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

(1) For purposes of Section 59-7-703(2)(b)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by:

(a) adding back to the line on the Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions; and

(ii) total foreign taxes paid or accrued.

(b) If the S corporation was not required to complete the line labeled "Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.

(2) The amount that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

(a) The deduction shall be equal to 15 percent of the Utah income attributable to nonresident shareholders.

(b) The deduction in Subsection (2)(a) shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

(3) The tax shall be computed using the maximum Utah individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under Subsection (2).

(4) An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

(a) name;

(b) social security number;

(c) percentage of S corporation held; and

(d) amount of Utah tax paid or withheld on behalf of that shareholder.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

(i) for which the broker or dealer does not take title; and

(ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886 with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264 was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by

Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under that section.

KEY: taxation, franchises, historic preservation, trucking industries

November 27, 2007

Notice of Continuation March 8, 2007

9-2-401 through 9-2-415
16-10a-1501 through 16-10a-1533
53B-8a-112
59-1-1301 through 59-1-1309
59-6-102
59-7-101
59-7-102
59-7-104 through 59-7-106
59-7-108
59-7-109
59-7-110
59-7-112
59-7-302 through 59-7-321
59-7-402
59-7-403
59-7-501
59-7-502
59-7-505
59-7-601 through 59-7-614
59-7-608
59-7-701
59-7-703
59-10-603
59-13-202

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.

A. Domicile.

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

a) a specific intent to abandon the former domicile;

b) the actual physical presence in a new domicile; and

c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

C. Determination of resident individual status for military servicepersons.

1. The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows, based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574.

a) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

b) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

2. Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of A.3.

3. A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

4. The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-9I-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined.

Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI.

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Section 59-10-117.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year

is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-9I-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-9I-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

a) name;

b) address;

c) social security number;

d) percentage of partnership or limited liability company income;

e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;

2. the employer's Utah withholding tax account number;

3. the amount of compensation;

4. the amounts of federal and Utah state income tax

withheld;

5. the social security number of the employee;

6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and

7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and

2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

1. files a federal Schedule H; or

2. withholds less than $1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of $1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

(a) The Utah portion must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

(b) The Utah portion may be shown:

(i) alongside the total for each item on the federal schedules K and K-1; or

(ii) on an attachment to the Utah return.

(3) A partnership, all of whose partners are resident individuals, shall satisfy the requirement to file a return with the commission by:

(a) maintaining records that show each partner's share of income, losses, credits, and other distributive items; and

(b) making those records available for audit.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to

Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414.

(1) Definitions:

(a) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(b) "Construction work" does not include facility maintenance or repair work.

(c) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(d) "Public utilities business" means a public utility under Section 54-2-1.

(e) "Transfer" pursuant to Section 63-38f-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if:

(a) The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

(b) The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

(3) The calculation of the number of full-time positions for purposes of the credits allowed under Section 63-38f-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

(4) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for

the tax year for which an enterprise zone credit is sought.

(5) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63-38f-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(6) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

(7) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

(8) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-9I-39. Subtraction from Federal Taxable Income for a Dependent Child With a Disability or an Adult With a Disability Pursuant to Utah Code Ann. Sections 59-10-114 and 59-10-501.

A. A taxpayer that claims the deduction from income for a dependent child with a disability or an adult with a disability allowed under Section 59-10-114 shall complete form TC-40D, Disabled Exemption Verification, as evidence that the taxpayer qualifies for the deduction.

B. The form described under A. shall be:

1. completed for each year for which the taxpayer claims the deduction; and

2. retained by the taxpayer.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

A. Definitions

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-10-108.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-108.5 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

E. Upon issuing a certification number under D., the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63-38f-413.

Taxpayers shall deduct credits authorized by Sections, 59-6-102, 59-13-202, Title 59, Chapter 10, and 63-38f-413 against Utah individual income tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-9I-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and

preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;

2. the amount contributed to the account;

3. the account's earnings;

4. distributions for qualified medical expenses;

5. distributions for non-medical expenses not subject to penalty;

6. distributions for non-medical expenses subject to penalty;

7. the amount of penalty required to be withheld and remitted to the state;

8. the account administrator's administrative fee charged

to the account; and

9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-48. Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;

2. fees paid to reimburse the state under Section 35A-3-308;

3. fees paid to an attorney or placement service for arranging the adoption;

4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and

5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;

2. foster care expenses incurred prior to the application for adoption; or

3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-9I-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-9I-50. Addition to Federal Taxable Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to federal taxable income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

A. interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

B. for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-9I-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

(a) of any change of address of the business;

(b) of a change of character of the business, or

(c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

(a) mail is returned as undeliverable as addressed and unable to forward;

(b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;

(c) the person fails to renew its annual business license with the Department of Commerce; or

(d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-9I-52. Subtractions For Health Care Insurance and For Premiums For Long-Term Care Insurance Pursuant to Utah Code Ann. Section 59-10-114.

A subtraction from federal taxable income under Subsection 59-10-114(2) for health care insurance and for premiums for long-term care insurance shall be determined in

the manner that provides the greatest possible subtraction under Subsection 59-10-114(2).

R865-9I-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886 with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264 was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-9I-54. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Sections 59-10-1014 and 59-10-1106.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Sections 59-10-1014 or 59-10-1106 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under those sections.

KEY: historic preservation, income tax, tax returns, enterprise zones

November 27, 2007 31A-32A-106
Notice of Continuation March 20, 2007 53B-8a-112
59-1-1301 through 59-1-1309
59-2-1201 through 59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-108 through 59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401 through 59-10-403
59-10-405.5
59-10-406 through 59-10-408
59-10-501
59-10-503
59-10-504
59-10-507
59-10-512
58-10-514
59-10-516
59-10-517
59-10-522
59-10-533
59-10-536
59-10-602
59-10-603
59-10-1003
59-10-1014
59-10-1106
59-13-202
59-13-302
63-38f-401 through 63-38f-414

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," and "state licensed appraiser" are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course A - Assessment Practice in Utah;

(ii) Course B - Fundamentals of Real Property Appraisal ;

(iii) Course C - Mass Appraisal of Land;

(iv) Course D - Building Analysis and Valuation;

(v) Course E - Income Approach to Valuation ;

(vi) Course G - Development and Use of Personal Property Schedules;

(vii) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

(viii) Course J - Uniform Standards of Professional Appraisal Practice (AQB).

(c) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course D, Course E, and Course J.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad

valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, E, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, G, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c); and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, E, H, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all Tax Commission appraiser education and practicum requirements for designation under Subsections (5), (6), and (8); and

(b) has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

(13) Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers contracting the work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the

present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

(ii) plus or minus changes in value as a result of factoring; then

(iii) plus or minus changes in value as a result of reappraisal; then

(iv) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate

certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax

Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2008 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

(i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length;

(E) class 21 commercial trailers; and

(F) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest.

(d) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when

warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;
(ii) a camper;
(iii) an other motorcycle;
(iv) an other trailer;
(v) a personal watercraft;
(vi) a small motor vehicle;
(vii) a snowmobile;
(viii) a street motorcycle;
(ix) a tent trailer;
(x) a travel trailer; and
(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:
(A) barricades/warning signs;
(B) library materials;
(C) patterns, jigs and dies;
(D) pots, pans, and utensils;
(E) canned computer software;
(F) hotel linen;
(G) wood and pallets;
(H) video tapes, compact discs, and DVDs; and
(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
07	72%
06	42%
05 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:
(A) CNC mills;
(B) CNC lathes;
(C) MRI equipment;
(D) CAT scanners; and
(E) mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
07	91%
06	81%
05	71%
04	63%
03	52%
02	42%
01	28%
00 and prior	14%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:
(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and

(K) cash registers and point of sale equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
07	86%
06	73%
05	57%
04	41%
03 and prior	21%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks:

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
07	92%
06	87%
05	80%
04	74%
03	62%
02	51%
01	38%
00	26%
99 and prior	13%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2008 percent good applies to 2008 models purchased in 2007.

(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
08	90%
07	82%
06	76%
05	69%
04	63%
03	56%
02	50%
01	44%
00	37%
99	31%
98	25%
97	18%
96	12%
95 and prior	6%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) high-tech hospital equipment;

(D) microscopes; and

(E) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
07	94%
06	91%
05	86%
04	82%
03	73%
02	63%
01	53%
00	43%
99	33%
98	22%
97 and prior	11%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(VII) VGO, amine, SWS, and HDS separators and drums;
(VIII) VGO and tank pumps;
(IX) TGU modules; and
(X) VGO tank and air coolers.
(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:
(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
07	94%
06	91%
05	86%
04	82%
03	73%
02	63%
01	53%
00	43%
99	33%
98	22%
97 and prior	11%

(h) Class 9 - Off-Highway Vehicles.
(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.
(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.
(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
07	96%
06	94%
05	91%
04	90%
03	83%
02	76%
01	68%
00	60%
99	52%
98	44%
97	35%
96	27%
95	18%
94 and prior	10%

(j) Class 11 - Street Motorcycles.
(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.
(k) Class 12 - Computer Hardware.
(i) Examples of property in this class include:
(A) data processing equipment;
(B) personal computers;
(C) main frame computers;
(D) computer equipment peripherals;
(E) cad/cam systems; and
(F) copiers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
07	62%
06	46%
05	21%
04	9%
03 and prior	7%

(l) Class 13 - Heavy Equipment.
(i) Examples of property in this class include:
(A) construction equipment;
(B) excavation equipment;
(C) loaders;
(D) batch plants;
(E) snow cats; and
(F) pavement sweepers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iii) 2008 model equipment purchased in 2007 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
07	61%
06	57%
05	54%
04	51%
03	47%
02	44%
01	41%
00	37%
99	34%
98	30%
97	27%
96	24%
95	20%
94 and prior	17%

(m) Class 14 - Motor Homes.
(i) Taxable value is calculated by applying the percent good against the cost new.
(ii) The 2008 percent good applies to 2008 models purchased in 2007.
(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
08	90%
07	64%
06	61%
05	58%
04	55%
03	51%
02	48%
01	45%
00	42%
99	39%
98	35%
97	32%
96	29%
95	26%
94	23%
93	19%
92 and prior	16%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.
(i) Examples of property in this class include:
(A) crystal growing equipment;
(B) die assembly equipment;

(C) wire bonding equipment;
(D) encapsulation equipment;
(E) semiconductor test equipment;
(F) clean room equipment;
(G) chemical and gas systems related to semiconductor manufacturing;
(H) deionized water systems;
(I) electrical systems; and
(J) photo mask and wafer manufacturing dedicated to semiconductor production.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
07	47%
06	34%
05	24%
04	15%
03 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.
(i) Examples of property in this class include:
(A) billboards;
(B) sign towers;
(C) radio towers;
(D) ski lift and tram towers;
(E) non-farm grain elevators; and
(F) bulk storage tanks.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
07	98%
06	96%
05	95%
04	94%
03	92%
02	89%
01	83%
00	78%
99	72%
98	65%
97	60%
96	54%
95	48%
94	43%
93	37%
92	30%
91	22%
90	15%
89 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.
(i) Examples of property in this class include:
(A) houseboats equal to or greater than 31 feet in length;
(B) sloops equal to or greater than 31 feet in length; and
(C) yachts equal to or greater than 31 feet in length.
(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:
(A) is not included in Class 17;
(B) may not be valued using Table 17; and
(C) is subject to an age-based uniform fee under Section 59-2-405.2.
(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
(A) the following publications or valuation methods:
(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
(aa) the manufacturer's suggested retail price for comparable property; or
(bb) the cost new established for that property by a documented valuation source; or
(B) the documented actual cost of new or used property in this class.
(v) The 2008 percent good applies to 2008 models purchased in 2007.
(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
08	90%
07	65%
06	63%
05	60%
04	58%
03	56%
02	54%
01	52%
00	50%
99	48%
98	45%
97	43%
96	41%
95	39%
94	37%
93	35%
92	33%
91	30%
90	28%
89	26%
88	24%
87 and prior	22%

(q) Class 17a - Vessels Less Than 31 Feet in Length
(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.
(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.
(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.
(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.
(i) Examples of property in this class include:
(A) oil and gas exploration equipment;
(B) distillation equipment;
(C) wellhead assemblies;
(D) holding and storage facilities;
(E) drill rigs;
(F) reinjection equipment;
(G) metering devices;
(H) cracking equipment;
(I) well-site generators, transformers, and power lines;
(J) equipment sheds;
(K) pumps;
(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
07	98%
06	97%
05	94%
04	93%
03	85%
02	77%
01	68%
00	59%
99	50%
98	40%
97	31%
96	21%
95 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2008 percent good applies to 2008 models purchased in 2007.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
08	95%
07	89%
06	83%
05	78%
04	73%
03	67%
02	62%
01	57%
00	52%
99	46%
98	41%
97	36%
96	30%
95	25%
94	20%
93	14%
92 and prior	9%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

(i) Examples of property in this class include:

(A) kit-built aircraft;

(B) experimental aircraft;

(C) gliders;

(D) hot air balloons; and

(E) any other aircraft requiring FAA registration.

(ii) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

(iii) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
07	75%
06	71%
05	67%
04	63%
03	59%
02	55%
01	51%
00	47%
99	43%
98	39%
97	35%
96 and prior	31%

(y) Class 24 - Leasehold Improvements.

(i) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;

(B) plumbing and roughed-in fixtures;

(C) floor coverings other than carpet;

(D) store fronts;

(E) decoration;

(F) wiring;

(G) suspended or acoustical ceilings;

(H) heating and cooling systems; and

(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
07	94%
06	88%
05	82%
04	77%
03	71%
02	65%
01	59%
00	54%
99	48%
98	42%
97	36%
96 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts

manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges;

(E) aircraft parts manufacturing test equipment; and

(F) aircraft parts manufacturing fixtures.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
07	86%
06	73%
05	58%
04	42%
03	22%
02 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
07	97%
06	95%
05	92%
04	90%
03	87%
02	84%
01	82%
00	79%
99	77%
98	74%
97	71%
96	69%
95	66%
94	64%
93	61%
92	58%
91	56%
90	53%
89	51%
88	48%
87	45%
86	43%
85	40%
84	38%
83	35%
82	32%
81	30%
80	27%
79	25%
78	22%
77	19%
76	17%
75	14%
74	12%
73 and prior	9%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2008.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).

B. The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

1. the owner of record of the property;

2. the property parcel, account, or serial number;

3. the location of the property;

4. the tax year in which the exemption was originally granted;

5. a description of any change in the use of the real or personal property since January 1 of the prior year;

6. the name and address of any person or organization conducting a business for profit on the property;

7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

8. a description of any personal property leased by the owner of record for which an exemption is claimed;

9. the name and address of the lessor of property described in B.8.;

10. the signature of the owner of record or the owner's authorized representative; and

11. any other information the county may require.

C. The annual statement shall be filed:

1. with the county legislative body in the county in which the property is located;

2. on or before March 1; and

3. using:

a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

b) a form that contains the information required under B.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record

of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:
(1) out-of-service for a period of more than ten consecutive hours; or
(2) in storage.
b) Rail cars cease to be out-of-service once repaired or removed from storage.
c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.
5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.
6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.
7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.
B. The provisions of this rule apply only to private rail car companies.
C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.
D. The out-of-service adjustment is calculated as follows.
1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.
2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.
E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.
F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.
1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.
a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.
b) Multiply the product obtained in F.1.a) by 50 percent.
2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.
a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.
b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.
c) Multiply the product obtained in F.2.b) by 50 percent.
3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.
1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.
2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.
B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.
C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

A. "Household" is as defined in Section 59-2-1202.
B. "Primary residence" means the location where domicile has been established.
C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.
D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
E. Factors or objective evidence determinative of domicile include:
1. whether or not the individual voted in the place he claims to be domiciled;
2. the length of any continuous residency in the location claimed as domicile;
3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
4. the presence of family members in a given location;
5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
6. the physical location of the individual's place of business or sources of income;
7. the use of local bank facilities or foreign bank institutions;
8. the location of registration of vehicles, boats, and RVs;
9. membership in clubs, churches, and other social organizations;
10. the addresses used by the individual on such things as:
a) telephone listings;
b) mail;
c) state and federal tax returns;
d) listings in official government publications or other correspondence;
e) driver's license;
f) voter registration; and
g) tax rolls;
11. location of public schools attended by the individual or the individual's dependents;
12. the nature and payment of taxes in other states;
13. declarations of the individual:
a) communicated to third parties;
b) contained in deeds;
c) contained in insurance policies;
d) contained in wills;
e) contained in letters;
f) contained in registers;
g) contained in mortgages; and
h) contained in leases.
14. the exercise of civil or political rights in a given location;
15. any failure to obtain permits and licenses normally required of a resident;
16. the purchase of a burial plot in a particular location;
17. the acquisition of a new residence in a different location.
F. Administration of the Residential Exemption.
1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.
2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the

amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(1) the owner of record of the property;

(2) the property parcel number;

(3) the location of the property;

(4) the basis of the owner's knowledge of the use of the property;

(5) a description of the use of the property;

(6) evidence of the domicile of the inhabitants of the property; and

(7) the signature of all owners of the property certifying that the property is residential property.

b) The application under F.7.a) shall be:

(1) on a form provided by the county; or

(2) in a writing that contains all of the information listed in F.7.a).

R884-24P-53. 2008 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	820
2)	Cache	690
3)	Carbon	540
4)	Davis	840
5)	Emery	525
6)	Iron	815
7)	Kane	450
8)	Millard	800
9)	Salt Lake	705
10)	Utah	735
11)	Washington	655
12)	Weber	800

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	720
2)	Cache	590
3)	Carbon	440
4)	Davis	740
5)	Duchesne	495
6)	Emery	425
7)	Grand	410
8)	Iron	715
9)	Juab	460
10)	Kane	350
11)	Millard	700
12)	Salt Lake	605
13)	Sanpete	550
14)	Sevier	570
15)	Summit	475
16)	Tooele	460
17)	Utah	635
18)	Wasatch	500
19)	Washington	555
20)	Weber	700

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	565
2)	Box Elder	570
3)	Cache	440
4)	Carbon	290
5)	Davis	590
6)	Duchesne	345
7)	Emery	275
8)	Garfield	220
9)	Grand	260
10)	Iron	565
11)	Juab	310
12)	Kane	200
13)	Millard	550
14)	Morgan	395
15)	Piute	355
16)	Rich	190
17)	Salt Lake	455
18)	San Juan	180
19)	Sanpete	400
20)	Sevier	420
21)	Summit	325
22)	Tooele	310
23)	Uintah	385
24)	Utah	485
25)	Wasatch	350
26)	Washington	405
27)	Wayne	335
28)	Weber	550

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	465
2)	Box Elder	470
3)	Cache	340
4)	Carbon	190
5)	Daggett	220
6)	Davis	490
7)	Duchesne	245
8)	Emery	175
9)	Garfield	120
10)	Grand	160
11)	Iron	465
12)	Juab	210

13)	Kane	100
14)	Millard	450
15)	Morgan	295
16)	Piute	255
17)	Rich	90
18)	Salt Lake	355
19)	San Juan	80
20)	Sanpete	300
21)	Sevier	320
22)	Summit	225
23)	Tooele	210
24)	Uintah	285
25)	Utah	385
26)	Wasatch	250
27)	Washington	305
28)	Wayne	235
29)	Weber	450

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	640
2)	Box Elder	695
3)	Cache	640
4)	Carbon	640
5)	Davis	695
6)	Duchesne	640
7)	Emery	640
8)	Garfield	640
9)	Grand	640
10)	Iron	640
11)	Juab	640
12)	Kane	640
13)	Millard	640
14)	Morgan	640
15)	Piute	640
16)	Salt Lake	640
17)	San Juan	640
18)	Sanpete	640
19)	Sevier	640
20)	Summit	640
21)	Tooele	640
22)	Uintah	640
23)	Utah	710
24)	Wasatch	640
25)	Washington	760
26)	Wayne	640
27)	Weber	695

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	255
2)	Box Elder	250
3)	Cache	265
4)	Carbon	130
5)	Daggett	160
6)	Davis	270
7)	Duchesne	165
8)	Emery	130
9)	Garfield	100
10)	Grand	125
11)	Iron	250
12)	Juab	150
13)	Kane	110
14)	Millard	195
15)	Morgan	185
16)	Piute	175
17)	Rich	105
18)	Salt Lake	225
19)	Sanpete	195
20)	Sevier	200
21)	Summit	205
22)	Tooele	185
23)	Uintah	195
24)	Utah	240
25)	Wasatch	210
26)	Washington	220
27)	Wayne	170
28)	Weber	305

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	50
2)	Box Elder	85
3)	Cache	100
4)	Carbon	50
5)	Davis	50
6)	Duchesne	65
7)	Garfield	50
8)	Grand	50
9)	Iron	55
10)	Juab	50
11)	Kane	50
12)	Millard	50
13)	Morgan	65
14)	Rich	50
15)	Salt Lake	55
16)	San Juan	50
17)	Sanpete	60
18)	Summit	50
19)	Tooele	50
20)	Uintah	60
21)	Utah	50
22)	Wasatch	50
23)	Washington	50
24)	Weber	80

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	10
2)	Box Elder	50
3)	Cache	65
4)	Carbon	15
5)	Davis	15
6)	Duchesne	30
7)	Garfield	15
8)	Grand	15
9)	Iron	20
10)	Juab	15
11)	Kane	15
12)	Millard	15
13)	Morgan	30
14)	Rich	15
15)	Salt Lake	20
16)	San Juan	15
17)	Sanpete	25
18)	Summit	15
19)	Tooele	15
20)	Uintah	25
21)	Utah	15
22)	Wasatch	15
23)	Washington	15
24)	Weber	45

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	88
2)	Box Elder	72
3)	Cache	75
4)	Carbon	56
5)	Daggett	60
6)	Davis	66
7)	Duchesne	70
8)	Emery	70
9)	Garfield	80
10)	Grand	76
11)	Iron	68
12)	Juab	70

13)	Kane	85
14)	Millard	84
15)	Morgan	60
16)	Piute	87
17)	Rich	70
18)	Salt Lake	72
19)	San Juan	72
20)	Sanpete	69
21)	Sevier	70
22)	Summit	78
23)	Tooele	77
24)	Uintah	74
25)	Utah	60
26)	Wasatch	57
27)	Washington	65
28)	Wayne	92
29)	Weber	74

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	28
2)	Box Elder	23
3)	Cache	24
4)	Carbon	16
5)	Daggett	17
6)	Davis	21
7)	Duchesne	22
8)	Emery	21
9)	Garfield	25
10)	Grand	22
11)	Iron	20
12)	Juab	21
13)	Kane	26
14)	Millard	26
15)	Morgan	19
16)	Piute	27
17)	Rich	23
18)	Salt Lake	22
19)	San Juan	22
20)	Sanpete	21
21)	Sevier	21
22)	Summit	23
23)	Tooele	24
24)	Uintah	23
25)	Utah	20
26)	Wasatch	18
27)	Washington	21
28)	Wayne	28
29)	Weber	23

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	18
2)	Box Elder	15
3)	Cache	15
4)	Carbon	12
5)	Daggett	12
6)	Davis	13
7)	Duchesne	14
8)	Emery	14
9)	Garfield	16
10)	Grand	15
11)	Iron	14
12)	Juab	14
13)	Kane	17
14)	Millard	17
15)	Morgan	12
16)	Piute	17
17)	Rich	14
18)	Salt Lake	14
19)	San Juan	15
20)	Sanpete	14
21)	Sevier	14
22)	Summit	15
23)	Tooele	15
24)	Uintah	14
25)	Utah	12
26)	Wasatch	12
27)	Washington	13
28)	Wayne	18
29)	Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	7
2)	Box Elder	6
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	6
10)	Grand	5
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	6
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	6
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	6
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

a) the name of the taxpayer awarded the judgment;

b) the appeal number of the judgment; and

c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

a) a copy of all judgment levy newspaper advertisements required;

b) the dates all required judgment levy advertisements were published in the newspaper;

c) a copy of the final resolution imposing the judgment levy;

d) a copy of the Notice of Property Valuation and Tax Changes, if required; and

e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-

assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Purpose. The purpose of this rule is to:

1. specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

2. identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

B. Definitions:

1. "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

3. "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

4. "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

a) Unitary properties include:

(1) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(2) all property of public utilities as defined in Section 59-2-102.

b) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(1) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(2) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(3) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

C. All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

D. General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

1. The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

2. The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator

as set forth in E.

a) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

b) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in E.4.

c) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

3. Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

b) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

c) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

d) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(a) NOI is defined as net income plus interest.

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(c) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

i) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

ii) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(2) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(a) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

ii) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

a. The risk free rate shall be the current market rate on 20-year Treasury bonds.

b. The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

c. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(a) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to value individual properties.

c) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

3. Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

a) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

b) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

4. Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

F. Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

1. Cost Regulated Utilities.

a) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(1) subtracting intangible property;

(2) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(3) adding any taxable items not included in the utility's net plant account or rate base.

b) Deferred Income Taxes, also referred to as DFIT,is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

c) Items excluded from rate base under F.1.a)(2) or b) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

2. Railroads.

a. The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the

period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.

A.1. "Factual error" means an error that is:

a) objectively verifiable without the exercise of discretion, opinion, or judgment, and

b) demonstrated by clear and convincing evidence.

2. Factual error includes:

a) a mistake in the description of the size, use, or ownership of a property;

b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

c) an error in the classification of a property that is eligible for a property tax exemption under:

(1) Section 59-2-103; or

(2) Title 59, Chapter 2, Part 11;

d) valuation of a property that is not in existence on the lien date; and

e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

a) the Utah Housing Corporation project identification number;

b) the project name;

c) the project address;

d) the city in which the project is located;

e) the county in which the project is located;

f) the building identification number assigned by the Internal Revenue Service for each building included in the project;

g) the building address for each building included in the project;

h) the total apartment units included in the project;

i) the total apartment units in the project that are eligible for low-income housing tax credits;

j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;

k) whether the project is:

(1) the rehabilitation of an existing building; or

(2) new construction;

l) the date on which the project was placed in service;

m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;

o) the maximum annual state low-income housing tax credits for which the project is eligible; and

p) for each apartment unit included in the project:

(1) the number of bedrooms in the apartment unit;

(2) the size of the apartment unit in square feet; and

(3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

a) operating statement;

b) rent rolls; and

c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of $3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value of $3,500 or less.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value of $3,500 or less shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has $3,500 or less of taxable tangible personal property in the county.

KEY: taxation, personal property, property tax, appraisals
November 27, 2007 **Art. XIII, Sec 2**
Notice of Continuation March 12, 2007 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365

R895. Technology Services, Administration.
R895-12. Telecommunications Services and Requirements.
R895-12-1. Purpose.

As provided in Section 63F-1-206, all state agencies must subscribe to the telecommunications services of the Department of Technology Services, unless excepted by law. The purpose of this rule is to specify the standards and procedures required of state agencies for telecommunications services.

R895-12-2. Definitions.

(1) "agency" means all state agencies that fall within the purview 63F-1-102.

(2) "division" means the Division of Enterprise Services.

R895-12-3. Required Agency Coordination with the Division of Enterprise Services.

A. Pursuant to Section 63F-1-206, all state agencies shall coordinate with and adhere to the requirements of the Division when:

1. in need of consulting assistance on telecommunications systems;
2. installing a new telecommunications system;
3. making additions or changes to a telecommunications system; or
4. moving all or some agency offices to a new location.

B. Agencies shall contact the Division about, and the Division shall provide assistance with:

1. evaluations of systems and system changes;
2. long distance services and costs;
3. technical training;
4. service and equipment procurement;
5. bid and proposal specifications and evaluations;
6. liaison with vendors;
7. maintenance contracts;
8. networking;
9. billing and questions on billings;
10. repair service;
11. operator assistance;
12. wiring and wire installation;
13. equipment and problems and alternatives;
14. line information and installation; and
15. other similar services.

R895-12-4. Delegation of Authority over Telecommunications Functions.

A. Pursuant to Section 63F-1-208, the Division may delegate specific telecommunications functions to specific agencies by written interagency agreement signed by the Division director and the head of the agency to which the authority is delegated.

B. Delegation agreements are subject to the approval of the executive director of the Department of Technology Services.

C. Terms of the interagency agreement must adhere to the provisions of Section 63F-1-208 and shall be audited for compliance by the Division at least annually.

D. Upon an audit finding of agency non-compliance, the Division director shall issue a written report to the Director of the Department of Technology Services recommending termination of the agreement or other corrective action. The Division shall send copies to the subject agency and head of the agency's department.

E. The Division shall provide any agency found in non-compliance an opportunity for an informal hearing or written response.

F. If, after receiving the agency's response, the Division still finds non-compliance with agreement terms, the Division shall terminate the agreement, subject to approval of the Director of the Department of Technology Services.

R895-12-5. Telecommunications Standards and Specifications.

A. The Division shall develop and update a listing of statewide telecommunications standards and specifications. Agencies may obtain copies of the current standards and specifications from the Division upon request.

B. Because most standards and specifications may vary considerably from one system to another, the Division shall specify all applicable standards and specifications in each agency contract or interagency delegation agreement.

R895-12-6. Fee Schedules.

As provided in Section 63A-6-105, the Division shall determine a schedule of service fees to be charged agencies, based on the most cost effective and economical alternatives.

KEY: telecommunications, data processing, appellate procedures
1992 63A-6-101 et seq.
Notice of Continuation November 9, 2007 63F-1-102
63F-1-206
63F-1-208

R994. Workforce Services, Unemployment Insurance.
R994-402. Extended Benefits.
R994-402-201. General Definition.

Extended benefits (EB) are paid during certain periods of high unemployment within a state. The maximum benefit amount for a claimant is one-half of the amount of his original regular claim up to a maximum of 13 times the weekly benefit amount. All extended benefits stop when the unemployment rate drops below a certain level. When the claimant has been unable to find work for an extended period of time and has exhausted all rights to regular benefits, extended benefits may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for extended benefits as the original claim is extended with the same weekly benefit amount. If the claimant does have sufficient additional wage credits and can qualify for a new regular claim, extended benefits are not allowed. There is no waiting week on an extended benefit claim. Availability requirements for extended benefits are different from those for regular claimants. The EB claimant must have no occupational restrictions, must reduce wage expectations and increase his work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.

R994-402-202. Federal Requirements for Extended Benefits.

(1) Notwithstanding the provisions of the Utah Employment Security Act concerning regular benefits, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Department finds that during such period:

(a) he failed to accept any offer of suitable work or failed to apply for any suitable work to which he was referred by the Department; or

(b) he failed to actively engage in seeking work as prescribed under Sections R994-405-305 and R994-403-118.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions in Subsection R994-402-202(1) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than 6 times the extended weekly benefit amount.

(3) For the purpose of extended benefits, the term "suitable work" means with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(a) the individual's extended weekly benefit amount, plus

(b) the amount, if any, of supplemental unemployment benefits payable to such individual for such week; and further,

(c) pays wages not less than the higher of:

(i) the minimum wage provided by Title 29 U.S. Code Section 216(b) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) the applicable state or local minimum wage;

(4) Notwithstanding R994-402-202(3), no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described in that subsection if:

(a) the position was not offered to such individual in writing and was not listed with the Department of Workforce Services;

(b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-202(3);

(c) the individual furnishes satisfactory evidence to the Department that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition specified by R994-402-202(3).

(5) No work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code and set forth herein under Subsection 35A-4-405(3).

(6) For the purpose of Subsection R994-402-202(1)(b), an individual shall be treated as actively engaged in seeking work during any week if:

(a) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(b) the individual furnishes tangible evidence that he has engaged in such effort during such week.

(7) The Department of Workforce Services shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in R994-402-203(3).

(8) An individual who has been denied benefits under the provisions of Section 35A-4-405(2)(b) shall not be eligible to receive extended benefits until after the end of the 52 week denial period and is then otherwise eligible for extended benefits and has subsequent to the date of such disqualification performed services in bona fide covered employment and earned wages for such services equal to at least six times the individual's weekly benefit amount.

(9)(a) Except as provided in subparagraph (9)(b) of this rule, payment of extended compensation shall not be made to any individual if he is filing against Utah from any other state under the interstate benefit payment plan, and an extended benefit period is not in effect that week in that state.

(b) Subparagraph (9)(a) of this rule shall not apply to the first two weeks for which extended compensation is payable to the individual.

R994-402-203. Elements to Qualify for Extended Benefits.

To be eligible for extended benefits the claimant must:

(1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) or his benefit year must have ended after the beginning of the EB period;

(2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;

(3) file for extended benefits in accordance with instructions;

(4) meet federal requirements for availability and work search; and

(5) accept suitable work which is offered in writing.

R994-402-204. Suitable Work.

(1) Suitable work for EB claimants includes work:

(a) in any occupation within the claimant's capabilities unless he can show that his prospects for obtaining work in his regular occupation are good, as defined in Subsection R994-402-202(3)(d)(iii); and

(b) paying at least the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.

(2) Suitable work for EB claimants does not include work:

(a) available as the result of a strike or labor dispute;

(b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled

claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his locality);

(c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any bona fide labor organization;

(d) requiring modifications of other conditions of work which would not be considered suitable for a regular claimant, such as unsafe working conditions, work requiring a move or travel beyond normal commuting distance, etc.; except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.

R994-402-205. Good Prospects.

When a claimant has a definite assurance of full-time employment in his customary occupation to begin within four weeks he is considered to have good prospects. He must continue to seek work, but it is not necessary to seek or accept employment consistent with the definition of suitable work for EB claimants. He may restrict his availability to occupations and conditions of employment as permitted for regular claimants.

R994-402-206. Position Offered in Writing.

A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral orally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.

R994-402-207. Systematic and Sustained Work Search.

(1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 5 employers including 3 in-person contacts each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not previously contacted. A claimant may not argue that in-person employer contacts are limited because of traditional methods of seeking work in a particular occupation or because of a limited number of employers in an occupation because the claimant may not limit himself to any particular occupation.

(2) There is no good cause for failure to make a systematic and sustained work search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(c) unless the claimant was on jury duty. Benefits may be allowed if the claimant failed to make the required work search because he was on jury duty and benefits would have been allowed under similar circumstances to a claimant for regular benefits. If the claimant made the required work search but was unable to work for more than half the normal workweek, he or she may not be eligible in accordance with Sections R994-403-111c and R994-403-112c.

(3) If the claimant has obtained part-time work, he is still required to make a work search on those days when he is not working. The number of contacts may be reduced if the amount of time working is substantial.

R994-402-208. Filing Requirements.

Extended benefit claimants must report information as requested on special EB claim forms. If a claim form is submitted with information that clearly shows the claimant did not intend to receive benefits, but was merely providing information, benefits will be denied under Subsection 35A-4-403(1)(a) rather than under EB provisions which require an indefinite disqualification under the federal regulations.

R994-402-209. Burden of Proof.

The claimant has the responsibility to keep records of all employers contacted in search of work including the name and address of the employer, the date of the contact, the person contacted, the result of the contact, and the type of work sought, etc. Failure to keep such records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

R994-402-210. Period of Disqualification.

A claimant who fails to accept an offer of suitable work or fails to actively seek work must be denied benefits for the week in which such failure occurs and for the following weeks until he has had employment during at least four subsequent weeks and earned at least six times his weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide employment. It is not necessary for the work to be in "covered" employment but it may not be self-employment.

R994-402-211. Requalification Requirement Following 5b2 Disqualification.

All disqualifications issued under the state provisions of the Employment Security Act continue to be in effect as provided by those laws on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive extended benefits until he has returned to bona fide covered employment and earned at least six times his weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

R994-402-212. Out of State Claimants.

Claimants filing EB claims against Utah who are living in states which are not in an EB period will be entitled to receive only two weeks of extended benefits. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive, no further payments can be made.

R994-402-213. Overpayments.

Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

R994-402-601. Notice.

Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department of Workforce Services shall make public announcement and give personal notice calculated to reach the largest practicable number of interested persons within the state. Such notice at the beginning of an extended benefit period will state the first date on which potential claimants may file a claim for and become eligible for extended benefit payments, which group of claimants may qualify for extended benefits, what action must be taken to protect their benefit rights, and the date by which claimants must file to qualify at the beginning of the extended benefit period.

R994-402-602. Effective Date of EB Claim.

Claims for extended benefit payments will be filed on

forms prescribed by the Department. The effective date of claims for extended benefits shall be the Sunday of the first week during which extended benefits are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim will be backdated under Subsection 35A-4-403(1)(a) up to two weeks for claimants who were not given personal notice of the extended benefit period. The Department may further extend the time during which claims for extended benefits may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b).

KEY: unemployment compensation, employee recruitment, extended benefits
November 15, 2007 35A-4-402(2)
Notice of Continuation May 17, 2007 35A-4-402(6)(a)

R994. Workforce Services, Unemployment Insurance.
R994-403. Claim for Benefits.
R994-403-101a. Filing a New Claim.

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday immediately preceding the date the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) Before payment can be made on a subsequent claim using those unused wages, each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify;

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower;

(d) the claimant must have actually received benefits during the preceding benefit year; and

(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the

requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the week the claimant failed to comply and ends with the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within a reasonable amount of time.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause for nonparticipation is established if the claimant can show:

(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or

(b) that the failure to participate was reasonable or beyond the claimant's control.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(5).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work,

however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not

considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

A claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work is generally interpreted to mean that each week a claimant should contact a minimum of two employers not previously contacted unless the claimant is otherwise directed by the Department. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort is not necessarily established simply by making a specific number of contacts to satisfy the Department requirement.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).

(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work:

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility; and

(4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks.

(3) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to

Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. A claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer fails to provide information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause, as it applies to this section of the rule, may be established if the claimant or employer:

(1) made reasonable attempts to provide the information within the time frame requested, or

(2) was prevented from complying due to circumstances which were compelling or beyond their control.

R994-403-123. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

(1) If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved. Benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

KEY: filing deadlines, registration, student eligibility, unemployment compensation
November 15, 2007 35A-4-403(1)
Notice of Continuation June 26, 2007

R994. Workforce Services, Unemployment Insurance.
R994-405. Ineligibility for Benefits.
R994-405-1. Determining the Reason for Separation.

When a job ends and a claim is filed, the Department must determine the reason for the separation. If there is more than one separation from the same employer, eligibility for benefits will be based on the reason for the last separation occurring prior to the date the claim is filed. However, an existing prior denial of benefits which resulted in a disqualification based on a prior separation from the same employer, will continue until the claimant has earned six times the weekly benefit amount on the claim in which the disqualification took place.) Charge decisions will also be made on the last separation as provided in rule R994-307-101(1)(a)(i). A separation decision will be made and may affect eligibility even if the employer is not covered by the Act except no separation decision will be made on noncovered self employment cases.

R994-405-2. Separations From a Temporary Help Company (THC).

THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims will be based on the reason for separation from the THC and not the reason for the separation from the client company.

(1) If the claimant reports back to the THC within a reasonable period of time after the claimant's last assignment ends and no work is offered because no work is available, the separation is a reduction of force, regardless of the reason the claimant left the last assignment except as provided in paragraph (2) of this section. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days. The claimant must contact the THC prior to filing a claim for benefits with the Department for the separation to be considered a reduction of force.

(2) If a claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do, it is considered a quit and the THC may be eligible for relief of charges.

(3) If the claimant fails to contact the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends, the separation is a quit and not a reduction of force.

(4) If the claimant files a new claim or reopens an existing claim prior to contacting the THC for another assignment, the job separation is a quit, even if the claimant subsequently contacts the THC within a reasonable period of time.

(5) If the claimant contacts the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends and the claimant refuses a new assignment, the job separation is a quit if the new assignment is similar to the previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The job duties, wages, hours, and conditions of the new assignment should be considered in determining the similarity of the new assignment.

(6) If the THC refuses to the send the claimant out on any new assignments it is a discharge. This includes instances where the claimant previously left an ongoing assignment or the client company prevented the claimant from completing an ongoing assignment.

R994-405-3. Professional Employment Organizations (PEO).

(1) PEO is defined in R994-202-106 and must be registered pursuant to Sections 58-59-101 et seq. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

R994-405-101. Voluntary Leaving (Quit) - General Information.

(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:

(a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),

(b) a suspension, or

(c) a period of absence initiated by the claimant.

(2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be

considered under the equity and good conscience standard.

R994-405-102. Good Cause.

To establish good cause, a claimant must show that continuing the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause will not be found if the claimant:

(i) reasonably could have continued working while looking for other employment,

(ii) had reasonable alternatives that would have made it possible to preserve the job like using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the claimant was required by the employer to violate state or federal law or if the claimant's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Section R994-405-306. The fact the claimant accepted a job does not necessarily make the job suitable. The longer a job is held, the more it tends to negate the argument that the job was unsuitable. After a reasonable period of time a contention the quit was motivated by unsuitability of the job is generally no longer persuasive. The Department has an affirmative duty to determine whether the employment was suitable, even if the claimant does not raise suitability as an issue.

R994-405-103. Equity and Good Conscience.

(1) If the good cause standard has not been met, the equity and good conscience standard must be considered in all cases except those involving a quit to accompany, follow, or join a spouse as provided in R994-405-104. If there are mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the claimant:

(a) acted reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action, and,

(b) demonstrated a continuing attachment to the labor market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. An active work search, as provided in R994-403-113c, should have commenced immediately after the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the claimant to seek work. Some circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

(1) If a claimant quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact. If the claimant's employment is contingent on the spouse's military assignment and the spouse is reassigned, the separation will be considered a discharge.

(2) For the purposes of this section, spouse is considered to include a significant other.

(3) Quitting to get married is also disqualifying as provided in R994-405-107(7)(a).

R994-405-105. Burden of Proof in a Quit.

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met. The failure of the claimant to provide information will not necessarily result in a ruling favorable to the employer. If the claimant quit unsuitable new work, the burden of proof as described in R994-405-308 applies.

R994-405-106. Quit or Discharge.

(1) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

(2) Leaving Prior to Effective Date of Termination.

(a) If a claimant leaves work prior to the date of an impending reduction of force, the separation is a quit. Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not disqualified for quitting benefits will be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) If the claimant quit to avoid a disqualifying discharge the separation will be adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a quit unless the claimant was previously disqualified as a result of the suspension.

(4) Leave of Absence.

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the claimant will be considered unemployed and the separation is adjudicated as a quit, even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a claimant hears rumors or other information suggesting he or she is to be laid off or discharged, the claimant has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge or lay off the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a claimant gives notice of his or her intent to leave at a future date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a claimant resigns but later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

(b) Discharge.

If a claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. Merely assigning vacation pay not previously assigned to the notice period does not make the separation a quit.

(7) If an employer tells a claimant it intends to discharge the claimant but allows the claimant to stay at work until he or she finds another job and the claimant decides to leave before finding another job, the separation is a quit. Good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge him or her.

R994-405-107. Examples of Reasons for Quitting.

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. However, if the new work is later determined to have been unsuitable and it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification will be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

If, after giving notice but prior to leaving the first job, the claimant learns the new job will not be available when promised, permanent, full-time, or suitable, good cause may be established if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits will be denied for failure to accept all available work from the prior employer under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

(2) Reduction of Hours.

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe the circumstances justify leaving.

(3) Personal Circumstances.

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the claimant made a reasonable attempt to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) Religious Beliefs.

To support an award of benefits following a voluntary separation due to religious beliefs, the work must conflict with a sincerely held religious or moral conviction. If a claimant was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) Transportation.

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for quitting employment. Therefore, if the claimant quit to get married, benefits will be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for a claimant to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is causing the harassment, the requirement that the employer be given an opportunity to stop the conduct is not necessary. Sexual harassment is a form of sex discrimination prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is the cause of the discrimination, the requirement that the employer be given an opportunity to stop the conduct is not necessary. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If the employer wishes to reduce its workforce and gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.

R994-405-108. Effective Date of Disqualification and Period of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

R994-405-109. Proximate Cause in a Quit.

The claimant must show a relationship between the reason or reasons for quitting both as to cause and time. If the claimant did not quit immediately after becoming aware of the adverse conditions which led to the decision to quit, a presumption arises that the claimant quit for other reasons. The presumption may be overcome by showing the delay was due to the claimant's reasonable attempts to cure the problem.

R994-405-201. Discharge - General Definition.

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits will be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the claimant. A reduction of force is considered a discharge without just cause.

R994-405-202. Just Cause.

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. An employer might not be able to demonstrate that a single violation, even though harmful, would be repeated by a long-term employee with an established pattern of complying with the employer's rules. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The claimant must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown the claimant should have been able to anticipate the negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the claimant had knowledge of the expected conduct. After a warning the claimant should have been given an opportunity to correct the objectionable conduct. If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving

a discharge due to unsatisfactory work performance, it must be shown the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

R994-405-203. Burden of Proof in a Discharge.

In a discharge, the employer initiates the separation and therefore has the burden to prove there was just cause for discharging the claimant. The failure of the employer to provide information will not necessarily result in a ruling favorable to the claimant. Interested parties have the right to rebut information contrary to their interests.

R994-405-204. Quit or Discharge.

The circumstances of the separation as found by the Department determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice, or the claimant's report are not controlling.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date. Unless there is some other evidence of disqualifying conduct, benefits will be awarded.

(b) Quit.

If the claimant gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. The claimant is not considered to have quit merely by saying he or she is looking for a new job. If a claimant resigns but later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

(2) Leaving in Anticipation of Discharge.

If a claimant leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. A claimant may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation is considered a discharge.

(3) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

R994-405-205. Disciplinary Suspension.

When a claimant is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If a claimant files during the suspension period, the matter will be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the claimant fails to return to work at the end of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

R994-405-206. Proximate Cause - Relation of the Offense to the Discharge.

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the claimant. If a separation decision has been made, it is generally demonstrated by giving notice to the claimant. Although the employer may learn of other offenses following the decision to terminate the claimant's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged a claimant because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the claimant's conduct. If a claimant files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a claimant's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

R994-405-207. In Connection with Employment.

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers include: goodwill, efficiency, employee morale, discipline, honesty and trust.

R994-405-208. Examples of Reasons for Discharge.

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

(1) Violation of Company Rules.

If a claimant violates a reasonable employment rule and just cause is established, benefits will be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a claimant believes a rule is unreasonable, the claimant generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying

conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a claimant was given notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct do not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a claimant to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the claimant knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the claimant's control is generally not disqualifying unless the claimant could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the claimant's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the claimant's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the claimant's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied regardless of whether the claimant would have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a claimant, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When a claimant engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the welfare of the general public, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and that was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his or her separation was consistent with the employer's written drug and alcohol policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

R994-405-209. Effective Date of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance

or vacation pay cannot be used as requalifying wages.

R994-405-210. Discharge for Crime - General Definition.

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in common usage "crime" is used to denote offenses of a more serious nature, the term "crime" as used in these sections, includes "misdemeanors". An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established the claimant was discharged for a crime that:

(a) was in connection with work,

(b) involved dishonesty constituting a crime or a felony or class A misdemeanor, and

(c) was admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

R994-405-211. In Connection with Work.

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

R994-405-212. Dishonesty or Other Disqualifying Crimes.

(1) For the purposes of this subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful means and thereafter converting it to the taker's own use. Theft includes:

(a) obtaining or exerting unauthorized control over property;

(b) obtaining control over property by threat or deception;

(c) obtaining control knowing the property was stolen; and,

(d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors are also disqualifying even if they are not theft-related such as assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

R994-405-213. Admission or Conviction in a Court.

(1) An admission offered to satisfy the requirements of R994-405-210(1)(c), must be a voluntary statement, verbal or written, in which a claimant acknowledges committing an act that is a violation of the law. The admission does not necessarily have to be made to a Department representative, however, the admission must have been made freely and not a false statement given under duress or made to obtain some concession.

(2) If the requirements of R994-405-210(1) have been met, a disqualification may be assessed even if no criminal charges have been filed and even if it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court or enters a plea in abeyance, there is a rebuttable presumption, for the purposes of this subsection, that the claimant has admitted to the criminal act.

(3) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

R994-405-214. Disqualification Period.

The 52-week disqualification period for Subsection 35A-4-405(2)(b) begins the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

R994-405-215. Deletion of Wage Credits.

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims. Lag period wages are wages paid after the base period but prior to the effective date of the claim.

R994-405-301. Failure to Apply for or Accept Suitable Work.

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

(a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

(b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

(i) accept a referral, or

(ii) properly apply for work, or

(iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

(a) the job is not suitable;

(b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or

(c) a denial of benefits would be contrary to equity and good conscience.

R994-405-302. Failure to Accept a Referral.

(1) Definition of a Referral. A referral occurs when the department provides information about a job opening to the claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

R994-405-303. Proper Application for Work.

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

(1) meet with the employer at the designated time and place,

(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought,

(3) present no unreasonable conditions or restrictions on acceptance of the available work and

(4) report for and pass a drug test if necessary.

R994-405-304. Failure to Accept an Offer of Work.

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

R994-405-305. Suitability of Work.

(1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.

(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

R994-405-306. Elements to Consider in Determining Suitability.

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.

(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.

(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.

(2) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.

(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.

(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.

(3) Working Conditions.

"Working conditions" refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:

(a) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(b) Benefits in Addition to Wages.

Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.

(c) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in

violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

(4) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

(5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-307. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

R994-405-308. Burden of Proof.

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be contrary to equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

R994-405-309. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) begins the Sunday of the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless

the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

R994-405-310. Good Cause.

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

R994-405-311. Equity and Good Conscience.

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there are mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the decision to refuse the offer of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after the week the job in question was available.

R994-405-401. Strike.

Claimants may be ineligible for unemployment benefits when the unemployment is due to a strike.

R994-405-402. Elements Necessary for a Disqualification.

All of the following elements must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment;

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment the strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers, and,

(7) the strike must not have been caused by the employer's failure to comply with State or Federal laws governing wages, hours or other conditions of work.

R994-405-403. Unemployment Due to a Strike.

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike;

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations,

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required,

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration, or

(d) upon the expiration of an existing contract, whether or not negotiations have ceased, the employer is willing to furnish work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike;

(a) the claimant was separated from employment for some other reason that occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent,

(b) the claimant was replaced by other permanent employees,

(c) the claimant was on a temporary layoff, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his or her regular job when called on the predetermined date his or her subsequent unemployment is due to a strike,

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike,

(e) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration, or

(f) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic sanctions. A lockout occurs when;

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions,

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called., or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a disqualifying strike, and then obtained work for employer B where he or she worked for a short period of time before being laid off due to reduction of force. If he or she then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his or her employment with employer B, the claimant is not eligible for unemployment benefits.

R994-405-405. Fomented by the Employer.

A strike will not result in a denial of benefits to claimants if the employer or any of its agents or representatives conspired, planned or agreed with any of the workers in promoting or inciting the development of the strike.

R994-405-406. Work Stoppage.

Work stoppage means that the claimant is no longer working but it is not necessary for the employer to be unable to continue to conduct business. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

R994-405-407. Grade, Group or Class of Worker.

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if the claimant is not a member of the group conducting the strike or not in sympathy with its purposes,

(b) the labor dispute concerns all of the employees and as a direct result causes a stoppage of their work,

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) the claimant voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) A claimant is not included in the grade, group or class if:

(a) the claimant is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute,

(b) the claimant was an employee of a company that has no work for him or her as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation,

(c) the claimant was an employee of a company that is out of work as a result of a strike at one of its work sites but he or she is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

(3) The burden of proof is on the claimant to show that he or she is not participating in any way in the strike.

R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.

If the strike was caused by the employer's failure to comply with state or federal laws governing wages, hours, or working conditions, the claimant is not disqualified as a result of the strike. However, to establish the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

R994-405-409. Period of Disqualification.

The period of disqualification begins on the effective date of the new or reopened claim and continues as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be assessed.

R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).

(1) Ineligibility following a strike. A disqualification must be assessed if the elements for disqualification are present, even if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike that are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his or her unemployment due to a strike, a new claim may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-

405(4) no longer apply. Any such redetermination must be requested by the claimant and will be effective the beginning of the week in which the request for a redetermination is made.

R994-405-411. Availability.

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability that will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

R994-405-412. Suitability of Work Available Due to a Strike.

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits will not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-413. Strike Benefits.

Strike benefits received by a claimant, which are paid contingent upon walking a picket line or for other services, are reportable income that must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury that requires no personal services is not reportable income.

R994-405-701. Payments Following Separation - General Definition.

Vacation and severance payments which a claimant is receiving, has received or is entitled to receive are treated as wages and the claimant's WBA is reduced as provided in R994-401-301(1). This is true even though vacation or severance payments do not meet the statutory definition of wages.

R994-405-702. Definition of Disqualifying Vacation and Severance Pay.

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he or she is eligible to receive payment from the employer whether the payment has already been made or will be made. The week in which the payment is actually received is not controlling in determining when the payment is deductible. It is not necessary for the employer to assign such payment to a particular week on the payroll records.

(b) Severance or Vacation Pay Which Is Subject to Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, a union, or the employer, it has not been established the claimant is entitled to payment and therefore a disqualification cannot be assessed. However, when it is determined the claimant is entitled to receive payment from the employer, a disqualification will be assessed beginning with the week in which the agreement is made establishing the right to payment, provided the other elements are present. An overpayment will be established as appropriate.

(2) Vacation Pay.

Vacation pay is not considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. Payments made directly to the claimant after separation and intended for the purchase of health insurance, whether made in a lump sum or periodically, are considered separation payments. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. Accrued sick leave, paid at the time of separation not because of an illness or injury is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was entitled to two weeks of vacation or severance pay at his or her regular wage or salary, the last day worked was a Wednesday, and his or her normal working days were Monday through Friday, the claimant is considered to have two weeks of pay beginning on the Thursday following the last day of work. The claimant's earnings for the first week, including his or her wages would normally exceed the weekly benefit amount; the claimant would have a full week of pay for the second week, and would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the last day of work is equivalent to the number of days during which the worker would have received a similar amount of his or her regular pay. For example, if the claimant received $500 in severance pay, and last earned $10 an hour working a 40 hour week, the claimant's customary weekly earnings were $400 a

week. The claimant is denied benefits for one week and must report $100 as if it were earnings on the claim for the following week. The Department will ordinarily use a claimant's base salary for calculations in this paragraph but if the claimant provides verifiable evidence of a rate of pay higher than the base salary in the period immediately preceding separation, that can be used.

(c) Payments Less than Weekly Benefit Amount. If separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) Temporary Separation.

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) Designated as a week of vacation. If the separation from the employer is not permanent and the claimant chooses to take his or her vacation pay, or is filing during the time previously agreed to as his or her vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation pay and at the time of a temporary layoff the claimant may still take his or her vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) Designated as a vacation shutdown. If the claimant files during a vacation shutdown, and is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his or her time off work before or after the vacation shutdown. A holiday shutdown is treated the same as a vacation shutdown.

R994-405-703. Period of Disqualification.

Only those payments equal to or greater than the claimant's weekly benefit amount require a disqualification. Payments less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

R994-405-704. Disqualifying Separations.

If the claimant has been disqualified as the result of his or her separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in bona fide covered employment.

R994-405-705. Base Period Wages.

Vacation pay is used as base period wages. Separation payments attributable to weeks following the separation can be used as base period wages if the employer was legally required to make such payments as provided in Section 35A-4-208. Separation payments that are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(4).

R994-405-801. Services in Education Institutions - General Definition.

Subsection 35A-4-405(8) denies unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant has been given a reasonable assurance that he or she can return to work when school resumes and the claimant intends to return when school resumes. Schools have traditionally not been in session during the summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. In extending coverage to school employees, it was intended such coverage would only be available when the claimant is no longer attached in any way to a school and the reason for the unemployment is not due to normal school recesses or paid sabbatical leave.

R994-405-802. Elements Required for Denial.

(1) The claimant is ineligible if all of the following elements are met:

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

R994-405-803. Educational Institution (School).

(1) To be considered an educational institution it is not necessary the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" that meets all of the following elements:

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training is academic, technical, trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or licensed to operate as a school by the State Board of Education or other government agency authorized to issue such license or permit.

(2) Head start programs operated by community based organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

R994-405-804. Employee for an Educational Institution.

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also, employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a school bus driver is employed by the city rather than the school district, he or she is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if there are base period wages from an educational

institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, the claimant may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he or she is otherwise eligible. If the claimant continues to be unemployed when school commences, he or she may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a request for a revision to include school employment.

R994-405-805. Reasonable Assurance.

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she will not be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he or she will not be recalled by the school where he or she last worked as a teacher's aide, but then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the separation or the claim, whichever is later.

R994-405-806. Substitute Teachers.

A substitute teacher is treated the same as any other school employee. If the claimant worked as a substitute teacher during the prior school term, he or she is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits will be denied when school is not in session. However, for any weeks the claimant is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

R994-405-807. Period of Disqualification.

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits will be denied for a week that begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks:

(1) between two successive academic years or terms, or

(2) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave, benefits may be allowed provided he or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

R994-405-808. Retroactive Payments.

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is not a professional employee in an instructional, research or administrative capacity,

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms,

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

R994-405-901. Professional Athletes.

(1) Eligibility for Professional Athletes.

A claimant who has performed services as a professional athlete for substantially all of his or her base period is not eligible for benefits between successive sports seasons or similar periods when the claimant has a reasonable assurance of performing those services in the next sports season or similar period.

(2) Substantially All Services Performed in a Base Period.

A claimant has performed services as a professional athlete for substantially all of his or her base period when the base period wages from that work equal 90 percent or more of the claimant's total base period wages.

(3) Definition of Professional Athlete.

For the purposes of determining eligibility for benefits, a claimant is a professional athlete when he or she is employed as a competitive athlete or works as a specified ancillary employee. Employment as a competitive athlete includes preparing for and participating in competitive sports events. Specified ancillary employees are managers, coaches, and trainers who are employed by professional sports organizations and referees and umpires employed by professional sports leagues or associations.

(4) Reasonable Assurance.

(a) The claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period when the claimant has:

(i) a multi-year contract with a professional sports organization, league or association;

(ii) a year-to-year contract and no indication of release;

(iii) no contract but the employer affirms intent to recall;

(iv) no contract but an employer representative confirms that the claimant is being considered for next season; or

(v) no contract but plans to pursue employment as a professional athlete.

(b) The claimant does not have a reasonable assurance if he or she has no contract and has withdrawn from sports as a professional athlete.

R994-405-902. Base Period Wage Credits.

(1) If the claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period and 90 percent or more of the claimant's base period wage credits were earned as a professional athlete, neither those wage credits nor any other base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between the applicable sports seasons or similar periods.

(2) All of the claimant's base period wage credits can be used if the claimant did not earn 90 percent or more of his or her base period wage credits as a professional athlete.

(3) All of the claimant's base period wages credits can be used to establish monetary eligibility for any weeks that begin during the applicable sports season or similar period.

R994-405-1001. Aliens - General Definition.

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the claimant is a citizen or national of the United States, or if not, whether the claimant is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

R994-405-1002. Alien Status.

(1) An alien may establish wage credits and qualify for benefit payments if he or she was:

(a) Lawfully admitted for permanent residence at the time the services were performed, or

(b) Lawfully present for the purpose of performing the services, or

(c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

R994-405-1003. Lawfully Admitted for Permanent Residence.

A claimant who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by the US Citizenship and Immigration Services (USCIS).

R994-405-1004. Lawfully Present for the Purpose of Performing Services.

These are aliens with work permits issued by USCIS who have received permission to work in the United States. Aliens who do not possess USCIS documentation have not been processed through USCIS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by USCIS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

R994-405-1005. Permanently Residing in U.S. Under Color of Law.

Eligibility can be established if:

(1) The USCIS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the USCIS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the USCIS as individuals who are permanently residing "under color of law."

R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave who are admitted on parole for medical treatment. All of these individuals are issued USCIS forms endorsed to show work status.

R994-405-1007. Procedural Requirements.

(1) Verification of Status.

If the claimant states he or she is an alien, the claimant must present documentary evidence of alien status. Acceptable evidence includes:

(a) An alien registration document or other proof of immigration registration from USCIS that contains the claimant's alien admission number or alien file number, or

(b) Other documents that constitute reasonable evidence indicating a satisfactory alien status such as a passport.

(2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the USCIS through an automated system or other system designated by the USCIS. This system must protect the claimant's privacy as required by law. The Department must use the claimant's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the Department must submit a photocopy of the documents to USCIS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the USCIS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances that would justify an extension of the time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

R994-405-1008. Preponderance of Evidence.

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while USCIS is being contacted for verification.

R994-405-1009. Availability for Work.

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination the alien is deportable.

R994-405-1010. Periods of Ineligibility.

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, the claimant is ineligible under Subsection 35A-4-403(1)(c) because he or she cannot legally obtain employment.

KEY: unemployment compensation, employment, employee's rights, employee termination
November 15, 2007 35A-4-502(1)(b)
Notice of Continuation June 26, 2007 35A-1-104(4)
35A-4-405